

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

— — — — — X
EDWARD CARTER, FRANK FIORILO,)
KEVIN LAMM, JOSEPH NOFI, and)
THOMAS SNYDER,)

Plaintiffs,)

-against-)

) Index No.
) CV 07 1215

INCORPORATED VILLAGE OF OCEAN)
BEACH; MAYOR JOSEPH C.)
LOEFFLER, JR., individually)
and in his Official capacity;)
former mayor NATALIE K. ROGERS,)
individually and in her)
official capacity, OCEAN BEACH)
POLICE DEPARTMENT; ACTING)
DEPUTY POLICE CHIEF GEORGE B.)
HESSE, individually and in his)
official capacity; SUFFOLK)
COUNTY; SUFFOLK COUNTY POLICE)
DEPARTMENT OF CIVIL SERVICE;)
and ALLISON SANCHEZ,)
individually and in her)
official capacity,)

Defendants.)

— — — — — X
DEPOSITION OF CYNTHIA DISTEFANO
Hauppauge, New York
June 5, 2009

Reported by:
Judi Johnson, RPR, CRR, CLR
Job No.: 22935

100 Veterans Memorial Highway
Hauppauge, New York

June 5, 2009
10:00 A.M.

Deposition of CYNTHIA DISTEFANO, held
at the offices of SUFFOLK COUNTY ATTORNEY'S
OFFICE, 100 Veterans Memorial Highway,
Hauppauge, New York, pursuant to Notice,
before Judi Johnson, a Registered
Professional Reporter, a Certified Realtime
Reporter, a Certified LiveNote Reporter and
Notary Public of the State of New York.

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CYNTHIA DISTEFANO
APPEARANCES:
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BY: ARIEL GRAFF, ESQ.

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BY: KENNETH A. NOVIKOFF, ESQ.

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CYNTHIA DISTEFANO
APPEARANCES CONTINUED:
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170 Old Country Road
Mineola, New York 11501

BY: (NOT PRESENT)

SUFFOLK COUNTY DEPARTMENT OF LAW

Attorneys for the County
100 Veterans Memorial Highway
Hauppauge, New York 11788

BY: ARLENE ZWILLING, ESQ.

ALSO PRESENT:
FRANK FIORILLO
TOM SNYDER - AM SESSION ONLY
CHERYL TYAS - THOMPSON SUMMER INTERN

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CYNTHIA DISTEFANO
IT IS HEREBY STIPULATED AND AGREED by
and between the attorneys for the respective
parties herein, that filing and sealing and
the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, shall be reserved to the
time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be sworn to
and signed before any officer authorized to
administer an oath, with the same force and
effect as if signed and sworn to before the
Court.

- o0o -

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1 CYNTHIA DISTEFANO
2 CYNTHIA DISTEFANO,
3 Called as a witness herein, having
4 first been duly sworn, was examined and
5 testified as follows:
6 BY THE REPORTER:
7 **Q Please state your name and address for**
8 **the record.**
9 A Cynthia M. DiStefano, 725 Veterans
10 Memorial Highway, Hauppauge, New York 11788.
11 EXAMINATION 9:59:44AM
12 BY MR. GRAFF: 9:59:44AM
13 **Q Just for the record, the pronouncement 9:59:55AM**
14 **of your name, can you state that?**
15 A DiStefano. 10:00:01AM
16 **Q Good morning, Ms. DiStefano. My name 10:00:02AM**
17 **is Arie Graff. I'm an attorney representing the**
18 **plaintiffs in this lawsuit in which you are**
19 **being deposed today.**
20 **Do you understand that testifying in a 10:00:10AM**
21 **deposition is like testifying before a judge and**
22 **jury?**
23 MR. NOVIKOFF: Is it, really? Come 10:00:15AM
24 on.
25 MS. ZWILLING: She is testifying, but 10:00:19AM
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1 CYNTHIA DISTEFANO
2 understand a question, please tell me and I can
3 repeat it or rephrase it.
4 **If you need to take a break, just let 10:01:15AM**
5 **me know and we can do that. But I would ask**
6 **that if there's a question pending that hasn't**
7 **been answered, that you first answer the**
8 **question, and then we can take a break.**
9 **And, of course, if you ever need to 10:01:26AM**
10 **consult with your counsel about whether a**
11 **response would cover anything, attorney-client**
12 **privilege or of that nature, you're always free**
13 **to do that as well.**
14 **Have you ever given testimony under 10:01:39AM**
15 **oath in any context before?**
16 A Yes. 10:01:42AM
17 **Q And what was the most recent time that 10:01:43AM**
18 **you have given testimony under oath?**
19 MS. ZWILLING: Arie, can you limit 10:01:49AM
20 questions about prior testimony to testimony
21 given in the course of her employment?
22 MR. NOVIKOFF: Yes, I would join in 10:01:54AM
23 that.
24 MR. GRAFF: Yes. 10:01:56AM
25
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1 CYNTHIA DISTEFANO
2 I don't think that we will stipulate it's
3 the same thing.
4 BY MR. GRAFF: 10:00:25AM
5 **Q Do you understand that you're 10:00:25AM**
6 **testifying under oath today?**
7 A I do. 10:00:27AM
8 **Q Have you testified before in a 10:00:30AM**
9 **deposition?**
10 A Not in a deposition, no. 10:00:35AM
11 MR. NOVIKOFF: Arie, are we doing 10:00:38AM
12 regular stip?
13 MR. GRAFF: Yes, under the Federal 10:00:41AM
14 Rules of Civil Procedure.
15 BY MR. GRAFF: 10:00:48AM
16 **Q So I'll be asking you questions today. 10:00:48AM**
17 **The answers are going to be recorded by the**
18 **court reporter. With that in mind, please make**
19 **sure to let me finish asking the question; and**
20 **by the same token, I'll be sure to let you**
21 **finish answering so we don't speak over each**
22 **other.**
23 A Okay. 10:01:05AM
24 **Q So we can have a clear transcript. 10:01:06AM**
25 **If at any point you don't hear or 10:01:09AM**
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 10:01:56AM
3 **Q Have you given testimony under oath 10:01:57AM**
4 **specifically in the context of your employment**
5 **with the county?**
6 A Yes. 10:02:02AM
7 **Q And have you done that on more than 10:02:02AM**
8 **one occasion?**
9 A I've done it once. I'm not sure 10:02:05AM
10 whether other times were under oath.
11 **Q What was the one time that you are 10:02:09AM**
12 **sure was under oath?**
13 A In federal court. 10:02:12AM
14 **Q And when did that take place? 10:02:16AM**
15 A Several years ago. 10:02:17AM
16 **Q And do you remember what the 10:02:19AM**
17 **allegations were in the lawsuit in which you**
18 **testified?**
19 A It was a question about a police 10:02:26AM
20 probation issue.
21 **Q And are you referring to a police 10:02:35AM**
22 **probationary period?**
23 A Yes. 10:02:39AM
24 **Q And in what jurisdiction was that an 10:02:39AM**
25 **issue?**
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<p style="text-align: right;">Page 10</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A You know, I don't remember. 10:02:44AM</p> <p>3 Q Do you remember why you testified in 10:02:47AM</p> <p>4 that case, what your connection was to it?</p> <p>5 MR. NOVIKOFF: Objection to form. 10:02:56AM</p> <p>6 MS. ZWILLING: Arie, I also have an 10:02:56AM</p> <p>7 objection to form. She may not know. I</p> <p>8 mean, it's a legitimate area of inquiry what</p> <p>9 she testified about or who called her, but</p> <p>10 to ask her why she was asked to testify.</p> <p>11 BY MR. GRAFF: 10:03:06AM</p> <p>12 Q What was the general subject matter of 10:03:06AM</p> <p>13 your testimony?</p> <p>14 A The Civil Service rules regarding the 10:03:09AM</p> <p>15 probationary period for a police officer.</p> <p>16 Q And was Civil Service a party in that 10:03:15AM</p> <p>17 case, if you know?</p> <p>18 A No. 10:03:20AM</p> <p>19 Q Do you remember who the plaintiff was 10:03:21AM</p> <p>20 in that case?</p> <p>21 A No. 10:03:23AM</p> <p>22 Q Do you remember who the defendants 10:03:26AM</p> <p>23 were?</p> <p>24 A No. 10:03:31AM</p> <p>25 Q What position did you hold at that 10:03:32AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 11</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 time?</p> <p>3 A I think I was a principal personnel 10:03:36AM</p> <p>4 analyst.</p> <p>5 Q Do you recall what attorney 10:03:45AM</p> <p>6 represented the county at that deposition?</p> <p>7 MS. ZWILLING: Objection. There's 10:03:49AM</p> <p>8 been no testimony that the county was a</p> <p>9 party.</p> <p>10 BY MR. GRAFF: 10:03:52AM</p> <p>11 Q Were you represented by an attorney at 10:03:53AM</p> <p>12 that deposition?</p> <p>13 A Represented? 10:04:00AM</p> <p>14 Q Was there an attorney representing the 10:04:02AM</p> <p>15 county who was there?</p> <p>16 A Yes. 10:04:05AM</p> <p>17 Q And who was that attorney? 10:04:06AM</p> <p>18 MR. NOVIKOFF: Relevancy escapes me. 10:04:11AM</p> <p>19 A I can't remember for sure. 10:04:16AM</p> <p>20 MR. NOVIKOFF: Was it a man or woman? 10:04:18AM</p> <p>21 THE WITNESS: Woman. 10:04:20AM</p> <p>22 MR. NOVIKOFF: Black hair, brown hair? 10:04:21AM</p> <p>23 MR. GRAFF: My question was for 10:04:24AM</p> <p>24 finding something searchable that I could</p> <p>25 identify the case about. They don't post</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 12</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 gender or hair color on ETF.</p> <p>3 MR. NOVIKOFF: Why don't you just 10:04:32AM</p> <p>4 leave a space in the transcript and she'll</p> <p>5 fill in the name of the case with the index</p> <p>6 number.</p> <p>7 MR. GRAFF: If you'd be able to do 10:04:37AM</p> <p>8 that, we can leave a space in the transcript</p> <p>9 here.</p> <p>10 THE WITNESS: Okay. 10:04:42AM</p> <p>11 MS. ZWILLING: We can't say for sure 10:04:43AM</p> <p>12 we can ascertain what it is, but we'll</p> <p>13 endeavor to do so.</p> <p>14 (INSERT)_____ 10:04:48AM</p> <p>15 _____ 10:04:49AM</p> <p>16 BY MR. GRAFF: 10:04:49AM</p> <p>17 Q Are you presently taking any 10:04:49AM</p> <p>18 medication that could influence your ability to</p> <p>19 testify truthfully and accurately today?</p> <p>20 A No. 10:04:56AM</p> <p>21 Q Are you sick at all today? 10:04:58AM</p> <p>22 A No. 10:05:00AM</p> <p>23 Q Is there anything that would impair 10:05:01AM</p> <p>24 your ability to testify truthfully and</p> <p>25 completely today?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 13</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A No. 10:05:07AM</p> <p>3 Q What is your current position with 10:05:12AM</p> <p>4 Suffolk County?</p> <p>5 A I'm the director of classification 10:05:17AM</p> <p>6 with the Suffolk County Civil Service</p> <p>7 Department.</p> <p>8 Q And how long have you held the 10:05:36AM</p> <p>9 position of director of classification?</p> <p>10 A Since October 2004. 10:05:40AM</p> <p>11 Q And what position did you hold 10:05:46AM</p> <p>12 immediately prior to becoming director of</p> <p>13 classification?</p> <p>14 A I should clarify. I was the chief of 10:05:51AM</p> <p>15 classification in 2004, which was deemed</p> <p>16 comparable to the director of classification in</p> <p>17 2008. It's essentially the same position.</p> <p>18 Q Okay. 10:06:05AM</p> <p>19 A Prior to that, I was a principal 10:06:05AM</p> <p>20 personnel analyst.</p> <p>21 Q And when did you come chief of 10:06:08AM</p> <p>22 classification?</p> <p>23 A That was 2004. 10:06:11AM</p> <p>24 Q And when did you become a principal 10:06:13AM</p> <p>25 personnel analyst?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 14

Page 15

1 CYNTHIA DISTEFANO
2 A I'm not sure. 10:06:19AM
3 Q Did you hold the position with the 10:06:20AM
4 county prior to being a principal personnel
5 analyst?
6 A Yes, I was a senior personnel analyst. 10:06:25AM
7 Q And for what period of time were you a 10:06:27AM
8 senior personnel analyst?
9 A I'm not sure of the exact date. 10:06:33AM
10 Q Did you hold a position prior to 10:06:38AM
11 senior personnel analyst?
12 A Personnel analyst. 10:06:42AM
13 Q And prior to personnel analyst? 10:06:48AM
14 A Personnel analyst trainee. 10:06:50AM
15 Q How long were you a personnel analyst 10:06:59AM
16 trainee, if you remember?
17 A March 1981. 10:07:05AM
18 Q And when did you change from being a 10:07:07AM
19 trainee to being a personnel analyst?
20 A In about 15 months, in 1982. 10:07:12AM
21 Q Were you employed prior to being a 10:07:21AM
22 personnel analyst trainee?
23 A Not by the county. 10:07:25AM
24 Q Where were you employed immediately 10:07:27AM
25 prior to that?
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Page 16

1 CYNTHIA DISTEFANO
2 degree?
3 A 1974. 10:08:39AM
4 Q And the graduate credits, during what 10:08:43AM
5 period of time did you earn those?
6 A '74 to '76. 10:08:47AM
7 Q And from '76 until you became a 10:08:54AM
8 personnel analyst trainee, did you have any
9 other formal training, either in a university or
10 a certification program?
11 A No. 10:09:05AM
12 Q And was the position of personnel 10:09:12AM
13 analyst trainee, did that have a Civil Service
14 classification?
15 A That was the Civil Service 10:09:17AM
16 classification.
17 Q And were there minimum qualifications 10:09:19AM
18 to a obtain that position?
19 A Yes. 10:09:24AM
20 Q As a personnel analyst trainee, was 10:09:33AM
21 there any particular jurisdiction within Suffolk
22 County that was within your area of
23 responsibility?
24 A There were several, yes. 10:09:41AM
25 Q Do you recall what they were? 10:09:43AM
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1 CYNTHIA DISTEFANO
2 A The Dime Savings Bank. 10:07:30AM
3 Q And other than the positions that we 10:07:37AM
4 just went through, have you held any other
5 positions with a government or municipal entity?
6 A No. 10:07:45AM
7 Q I assume you graduated high school? 10:07:57AM
8 A Yes. 10:07:59AM
9 Q And what high school did you attend? 10:07:59AM
10 A Andrew Jackson High School in Cambria 10:08:02AM
11 Heights, Queens.
12 Q After graduating Andrew Jackson High 10:08:08AM
13 School, did you go on to pursue any higher
14 education?
15 A Not immediately. 10:08:14AM
16 Q At some point, did you? 10:08:15AM
17 A Yes. 10:08:16AM
18 Q And what form of higher education did 10:08:17AM
19 you pursue first?
20 A I have a bachelor's degree from CW 10:08:21AM
21 Post.
22 Q And have you had any other formal -- 10:08:28AM
23 A I have 12 graduate credits from 10:08:31AM
24 Hofstra.
25 Q When did you obtain the bachelor's 10:08:35AM
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Page 17

1 CYNTHIA DISTEFANO
2 A The police department, the Town of 10:09:45AM
3 Brookhaven. Those are the two I'm sure about
4 when I started.
5 Q When you say the police department, 10:09:53AM
6 are you referring --
7 A Suffolk County Police Department. 10:09:58AM
8 Q And as a personnel analyst trainee, 10:10:02AM
9 what was the position title of the person that
10 you reported to?
11 A Senior personnel analyst. 10:10:12AM
12 Q And who was the senior personnel 10:10:20AM
13 analyst who you reported to when you first
14 started working as a trainee?
15 MR. NOVIKOFF: In 1981? Oh, Arie, 10:10:26AM
16 we're gonna be here all day. Come on --
17 never mind.
18 A Gino DiStefano. 10:10:34AM
19 Q And is Gino DiStefano any relation to 10:10:39AM
20 yourself?
21 A Now he is, yes. 10:10:43AM
22 Q Is he -- 10:10:46AM
23 A He's my husband. 10:10:48AM
24 Q The area of your jurisdiction or 10:10:53AM
25 responsibilities as personnel analyst trainee,
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Page 18

Page 19

CYNTHIA DISTEFANO

did that ever change from Brookhaven in Suffolk County to the time you were a trainee?

A Yes. 10:11:01AM

Q And what other areas were within your jurisdiction or responsibility as a trainee?

A They changed occasionally for all of the personnel analyst trainees amongst towns, school districts, county departments. I don't remember specifically.

MR. NOVIKOFF: Was this witness 10:11:22AM

noticed up as a fact witness or an expert witness? Because if she was noticed up as an expert witness, then I guess I could understand why you're going through her experiences and knowledge. If she was

noticed up as a fact witness, then I think this entire line of questioning is palpably irrelevant, and I'm putting it on the record as such.

MR. GRAFF: Okay. She was noticed as a 30(b)(6) designee. 10:11:45AM

MR. NOVIKOFF: Right. Which, in my understanding, under the federal rules means that she's the one that the county is

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CYNTHIA DISTEFANO

putting up to speak to the facts of this case as you've alleged them and whatever is relevant and material to the case. She's not here as an expert. And my understanding of a 30(b)(6) witness is that if she doesn't have personal knowledge of particular facts, it's incumbent upon her to find out the facts. What her duties and responsibilities and knowledge were back in -- almost 30 years ago, I believe goes more towards that of an expert witness than of a 30(b)(6) witness. And again, I'm putting on the record if this line of questioning continues, I will be seeking appropriate sanctions.

MR. GRAFF: You can do what you think is appropriate. 10:12:32AM

MS. ZWILLING: I just want to note for the record that I do agree with Mr. Novikoff. For purposes of expediency at this point, I am going to permit you a bit of latitude, but I'm hoping that we're not going to be here all day with things the witness did 35 years ago. 10:12:34AM

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Page 20

Page 21

CYNTHIA DISTEFANO

MR. GRAFF: No, we're not going to be spending the day on that. I'm just going through -- 10:12:50AM

MS. ZWILLING: Just move ahead, and if we move ahead in a prompt fashion, it will -- 10:12:53AM

MR. GRAFF: Great. 10:12:54AM
BY MR. GRAFF: 10:12:55AM

Q Did you have to apply for the position of personnel analyst from the position that you held as a personnel analyst trainee?

A No. The trainee had a one-year or two-year probationary period, and that was the training period. If you were successful, you became a personnel analyst without further examination. It was shortened from two years during my time as a trainee, so I did not serve the full two years as a trainee. 10:12:59AM

Q And did the jurisdiction or area of your responsibilities change when you became a personnel analyst from your previous position of being a personnel analyst trainee?

A No. 10:13:43AM

Q So the various departments and
TSG Reporting - Worldwide (877) 702-9580 10:13:45AM

CYNTHIA DISTEFANO

Brookhaven and Suffolk County PD that you referred to before, were those the same areas of jurisdiction, responsibility during your period as a personnel analyst?

A I'm not absolutely sure when things changed during the years. 10:13:57AM

Q And when you were a personnel analyst, what was the position level or title of the person that you reported to? 10:14:01AM

A Senior personnel analyst. 10:14:06AM

Q And either a personnel analyst or a personnel analyst trainee, did you ever have jurisdiction or responsibility over anything to do with Civil Service and the Incorporated Village of Ocean Beach?

A No. 10:14:31AM

Q And who was the senior personnel analyst or who were they, if more than one, that you reported to as a personnel analyst? 10:14:37AM

A That was still Gino DiStefano. 10:14:46AM

Q Was that the person you reported to for the entire period that you were a personnel analyst? 10:14:49AM

A Yes. 10:14:54AM

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<p style="text-align: right;">Page 22</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q And I may have asked this before, but 10:14:54AM</p> <p>3 just to be clear. If you recall, for what</p> <p>4 length of time in terms of years or months, as</p> <p>5 best you can remember, were you either a</p> <p>6 personnel analyst or a personnel analyst</p> <p>7 trainee?</p> <p>8 A Trainee was about 15 months. I was 10:15:14AM</p> <p>9 promoted to senior around 1984. I'm not</p> <p>10 absolutely sure of that.</p> <p>11 Q And what were your duties as a 10:15:29AM</p> <p>12 personnel analyst?</p> <p>13 A To oversee the public employment in 10:15:34AM</p> <p>14 the jurisdictions to which I was assigned for</p> <p>15 their conformance with Civil Service rules and</p> <p>16 regulations.</p> <p>17 Q And are the duties of a personnel 10:15:52AM</p> <p>18 analyst today different in any material respect</p> <p>19 from the duties of a personnel analyst at the</p> <p>20 time you held that position?</p> <p>21 A No. 10:16:01AM</p> <p>22 Q As a senior personnel analyst, what 10:16:13AM</p> <p>23 were the -- what was the jurisdiction or</p> <p>24 geographic area of your responsibility?</p> <p>25 A I don't remember precisely. 10:16:25AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 23</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q Did it ever include the Incorporated 10:16:27AM</p> <p>3 Village of Ocean Beach?</p> <p>4 A No. 10:16:31AM</p> <p>5 Q Did it include any police departments? 10:16:31AM</p> <p>6 A I think I still had Suffolk County 10:16:42AM</p> <p>7 Police Department, but I'm not absolutely sure.</p> <p>8 Q As a personnel analyst trainee -- as a 10:16:54AM</p> <p>9 personnel analyst trainee, was there any</p> <p>10 formalized instruction beyond on-the-job</p> <p>11 training as to how to satisfy the duties of a</p> <p>12 personnel analyst?</p> <p>13 MS. ZWILLING: Objection. 10:17:12AM</p> <p>14 MR. NOVIKOFF: Objection to form. 10:17:13AM</p> <p>15 MS. ZWILLING: My objection is beyond 10:17:14AM</p> <p>16 that. I mean, we're talking about a period</p> <p>17 decades before the events relative to this</p> <p>18 case.</p> <p>19 MR. GRAFF: Okay. Let me ask it in 10:17:23AM</p> <p>20 relation to today or --</p> <p>21 BY MR. GRAFF: 10:17:37AM</p> <p>22 Q In 2006, could you please describe the 10:17:37AM</p> <p>23 nature of the training that a personnel analyst</p> <p>24 trainee underwent, undergoes or underwent?</p> <p>25 MR. NOVIKOFF: In 2006 -- you want to 10:17:52AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 24</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 ask this witness in the year 2006, what the</p> <p>3 training of a personnel analyst trainee</p> <p>4 would be?</p> <p>5 MR. GRAFF: Let me ask a different 10:18:03AM</p> <p>6 question.</p> <p>7 BY MR. GRAFF: 10:18:04AM</p> <p>8 Q During the period from 2000 to the 10:18:05AM</p> <p>9 present, has the nature of the training provided</p> <p>10 to personnel analyst trainees changed in any</p> <p>11 material respects?</p> <p>12 A Just in one. 10:18:15AM</p> <p>13 Q Before telling me the one change, 10:18:19AM</p> <p>14 describe the nature of that training up until</p> <p>15 the time the change was made.</p> <p>16 A Normally the training is that we are 10:18:28AM</p> <p>17 divided into units in the department. The units</p> <p>18 are supervised by a principal personnel analyst.</p> <p>19 There are subordinate senior personnel analysts</p> <p>20 and then analysts and trainees. The trainee</p> <p>21 works with a senior, with an experienced analyst</p> <p>22 or with the principal and handling</p> <p>23 jurisdictions, but not independently.</p> <p>24 MR. NOVIKOFF: Just one question. On 10:18:58AM</p> <p>25 your 30(B)(6) Notice, was this area of</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 25</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 inquiry identified as an area you were going</p> <p>3 to question her on?</p> <p>4 MR. GRAFF: It was. 10:19:07AM</p> <p>5 BY MR. GRAFF: 10:19:09AM</p> <p>6 Q And what was the change you were 10:19:10AM</p> <p>7 referring to?</p> <p>8 A The change is that we used to have 10:19:13AM</p> <p>9 state conferences that provided training. But</p> <p>10 the present county executive has not allowed</p> <p>11 travel, so we no longer can go to those.</p> <p>12 Q And when did that change come into 10:19:26AM</p> <p>13 place?</p> <p>14 A When was Mr. Levy elected? I don't 10:19:29AM</p> <p>15 remember.</p> <p>16 Q Was it within the last one to two 10:19:34AM</p> <p>17 years?</p> <p>18 A Six years. I think he's in the second 10:19:39AM</p> <p>19 year of his second term.</p> <p>20 Q And at what point in his term did the 10:19:43AM</p> <p>21 change come into place?</p> <p>22 A Within the first year or two. 10:19:49AM</p> <p>23 Q And you had explained that the 10:20:00AM</p> <p>24 position of being a personnel analyst trainee</p> <p>25 when you held it ripened into being a personnel</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

1 CYNTHIA DISTEFANO
2 analyst without meeting subsequent examination;
3 is that correct?
4 A Yes. 10:20:11AM
5 Q Was that the case also from the period 10:20:12AM
6 from 2000 to present?
7 A Yes. After one year as a successful 10:20:16AM
8 trainee.
9 Q And how is it -- what are the factors 10:20:20AM
10 or what's the methodology for evaluating whether
11 someone has been a successful trainee in that
12 context?
13 A An ongoing day-to-day observation by 10:20:29AM
14 the senior and the principal analyst assigned to
15 that person.
16 Q And are there any written evaluations 10:20:38AM
17 other than what's observed?
18 A No. 10:20:43AM
19 Q And you explained that personnel 10:20:53AM
20 analyst trainees worked together with a more
21 senior person and that, I believe, there are
22 many different possible people that a trainee
23 could be paired with; is that correct?
24 A It's a senior or a principal. 10:21:05AM
25 Q And how many seniors were there during 10:21:07AM
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1 CYNTHIA DISTEFANO
2 director.
3 Q During the period, let's keep it 10:22:22AM
4 focused now on 2000 to the present, what
5 requirements or standards, if any, had to be
6 satisfied for a personnel analyst to become a
7 senior personnel analyst?
8 A There's a Civil Service examination, 10:22:38AM
9 and it's promotional, I believe, with two years
10 of permanent competitive status as a personnel
11 analyst.
12 Q How many personnel analysts were there 10:22:52AM
13 at any given point between 2000 and the present?
14 A Twelve, 14. I'm guessing. 10:23:01AM
15 Q And what is the substance of the 10:23:10AM
16 examination that is required to become a senior
17 personnel analyst?
18 MS. ZWILLING: At what time? 10:23:22AM
19 MR. GRAFF: 2000 to the present. 10:23:24AM
20 BY MR. GRAFF: 10:23:26AM
21 Q And please let me know if it changed 10:23:27AM
22 in that period.
23 A I'm not in the examinations division. 10:23:30AM
24 I've taken one examination. There are questions
25 on personnel issues, questions on Civil Service
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1 CYNTHIA DISTEFANO
2 the period 2000 to the present at any one time?
3 A From three to five. 10:21:17AM
4 Q And the other position that you had 10:21:26AM
5 mentioned that could be paired with the trainee
6 was?
7 A Principal personnel analyst. 10:21:30AM
8 Q And how many principal personnel 10:21:32AM
9 analysts were there at any --
10 A There were three. 10:21:36AM
11 Q And have there been three throughout 10:21:37AM
12 the period from 2000 through the present?
13 A Yes. 10:21:44AM
14 Q And who does the principal personnel 10:21:46AM
15 analyst report to, what position?
16 A The chief of classification, now the 10:21:51AM
17 director of classification.
18 Q And that's the position that you 10:21:57AM
19 currently hold?
20 A Yes. 10:21:59AM
21 Q And who do senior personnel analysts 10:22:00AM
22 report to?
23 A The principal personnel analyst. 10:22:04AM
24 Q And whom do you report to? 10:22:07AM
25 A Alan Schneider, the personnel 10:22:10AM
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1 CYNTHIA DISTEFANO
2 law, questions on interviewing.
3 Q And when you say questions on Civil 10:23:41AM
4 Service law, is that the New York State Civil
5 Service law?
6 A Yes. 10:23:48AM
7 Q And are there other bodies of law or 10:23:48AM
8 regulation that are also tested on that
9 examination?
10 A We have Civil Service rules. I'm not 10:23:59AM
11 sure whether there are questions specifically
12 related to those.
13 Q And what are the duties of a senior 10:24:06AM
14 personnel analyst?
15 A Senior personnel analysts are also 10:24:10AM
16 assigned jurisdictions, but they have
17 supervisory responsibilities over the personnel
18 analysts and the trainees assigned to them.
19 Q When you refer to jurisdictions, are 10:24:22AM
20 you referring to geographical units?
21 A Municipalities. 10:24:26AM
22 Q So it would be all the Civil Service 10:24:28AM
23 competitive class positions within a
24 municipalities?
25 A Specific municipalities and the 10:24:35AM
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<p style="text-align: right;">Page 30</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 positions therein.</p> <p>3 Q As a senior personnel analyst, do you 10:24:39AM</p> <p>4 recall what municipalities you had jurisdiction</p> <p>5 over?</p> <p>6 A I don't know which were at specific 10:24:54AM</p> <p>7 times. I can tell you that I had over the</p> <p>8 years, but what title I was in when I had them,</p> <p>9 I'm not going to be able to separate.</p> <p>10 Q So in terms of all of your positions 10:25:06AM</p> <p>11 up until being director of classification, could</p> <p>12 you identify those jurisdictions?</p> <p>13 A I had the Town of Babylon, the Town of 10:25:17AM</p> <p>14 Brookhaven, Suffolk County PD, Department of</p> <p>15 Finance and Taxation, Department of Audit and</p> <p>16 Control, District Attorney's office, county</p> <p>17 executive's office, legislature, the Civil</p> <p>18 Service Department. Various school districts.</p> <p>19 I know I had Southold. I had Middle Country. I</p> <p>20 had Orient. I had Little Flower. I had the</p> <p>21 Village of Northport for a while.</p> <p>22 Q Was the Village of Ocean Beach ever a 10:26:03AM</p> <p>23 jurisdiction under your supervision?</p> <p>24 MR. NOVIKOFF: I didn't hear it. 10:26:09AM</p> <p>25 A It was under my indirect supervision 10:26:11AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 31</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 because subordinates have responsibility for</p> <p>3 that.</p> <p>4 Q What positions did you -- which of the 10:26:21AM</p> <p>5 position that you held did you have subordinates</p> <p>6 who had jurisdiction over Ocean Beach?</p> <p>7 A Definitely as the chief of 10:26:36AM</p> <p>8 classification.</p> <p>9 Q What about as a senior -- 10:26:40AM</p> <p>10 A I'm not sure as a principal. Not as a 10:26:42AM</p> <p>11 senior.</p> <p>12 Q What standards of requirements had to 10:26:55AM</p> <p>13 be satisfied -- I'm now switching back to 2000</p> <p>14 to the present -- for a senior personnel analyst</p> <p>15 to become a principal personnel analyst?</p> <p>16 A Again a Civil Service examination and 10:27:08AM</p> <p>17 qualifying time as a senior personnel analyst.</p> <p>18 Q And what are the duties of a principal 10:27:18AM</p> <p>19 personnel analyst? Again, it's the period 2000</p> <p>20 to the present.</p> <p>21 A There's a larger scope of 10:27:26AM</p> <p>22 responsibility. More people as subordinates,</p> <p>23 because there are subordinate supervisors and</p> <p>24 seniors.</p> <p>25 Q And what are your current duties as 10:27:39AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 32</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 director of classification?</p> <p>3 A I oversee the classification division, 10:27:42AM</p> <p>4 which has three principal personnel analysts and</p> <p>5 four senior personnel analysts at the present</p> <p>6 and the analysts underneath them. That's</p> <p>7 divided into three sections. And I oversee the</p> <p>8 certifications division, which establishes the</p> <p>9 eligible lists and certifies the lists to the</p> <p>10 employers. And I oversee the administrator 3,</p> <p>11 who prepares the budget for our department.</p> <p>12 Q And as director of classification, do 10:28:34AM</p> <p>13 you or anybody in your department actually</p> <p>14 create regulations or draft the text of</p> <p>15 regulations that are then promulgated?</p> <p>16 A I have worked on amendments to our 10:28:47AM</p> <p>17 Civil Service rules, which then go to the state</p> <p>18 for approval.</p> <p>19 Q I have some questions about the Civil 10:29:03AM</p> <p>20 Service rules. First, just very basically, are</p> <p>21 you able to explain what that body of rule or</p> <p>22 regulation is?</p> <p>23 A Yes. 10:29:15AM</p> <p>24 MR. NOVIKOFF: Objection to form. 10:29:15AM</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 33</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 10:29:16AM</p> <p>3 Q Can you explain what Civil Service 10:29:17AM</p> <p>4 rules are?</p> <p>5 MS. ZWILLING: Objection. 10:29:20AM</p> <p>6 MR. NOVIKOFF: Objection to form. 10:29:20AM</p> <p>7 MS. ZWILLING: She can answer. 10:29:21AM</p> <p>8 A Civil Service rules are specific to 10:29:23AM</p> <p>9 Suffolk County, and they set forth how we apply</p> <p>10 the Civil Service law that the state has set.</p> <p>11 So it's more detailed.</p> <p>12 Q And who -- is there a department or 10:29:37AM</p> <p>13 division within the department that's</p> <p>14 responsible for drafting those rules?</p> <p>15 MS. ZWILLING: Objection. 10:29:49AM</p> <p>16 You can answer. 10:29:50AM</p> <p>17 A No. We usually form a committee with 10:29:51AM</p> <p>18 representatives from examinations and</p> <p>19 classification, and we work on them together.</p> <p>20 The personnel director, of course, reviews</p> <p>21 everything before it goes to Albany.</p> <p>22 Q And who or what position initiates the 10:30:07AM</p> <p>23 creation of a committee like that?</p> <p>24 A It becomes necessary when we see that 10:30:16AM</p> <p>25 we need to make changes in those rules or we</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 34</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 need to explain something that's causing</p> <p>3 confusion and we want to clarify.</p> <p>4 Q And who has the -- who's the decision 10:30:27AM</p> <p>5 maker who says let's make a committee?</p> <p>6 A It's Alan Schneider. 10:30:35AM</p> <p>7 Q Have you ever been on such a 10:30:37AM</p> <p>8 committee?</p> <p>9 A Yes. 10:30:39AM</p> <p>10 Q Have you ever -- could you identify 10:30:42AM</p> <p>11 some, or as many as you can recall, of the rules</p> <p>12 for which you were on a committee that made</p> <p>13 amendments or modifications?</p> <p>14 MS. ZWILLING: During what period of 10:30:56AM</p> <p>15 time?</p> <p>16 BY MR. GRAFF: 10:30:57AM</p> <p>17 Q During any point during your 10:30:58AM</p> <p>18 employment with the county?</p> <p>19 A The committee reviewed all of the 10:31:05AM</p> <p>20 rules and just made attempts and revisions as we</p> <p>21 went through and we thought things needed to be</p> <p>22 addressed.</p> <p>23 Q Are the Civil Service rules for 10:31:13AM</p> <p>24 Suffolk County published?</p> <p>25 A Yes. 10:31:20AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 35</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q Are they made available to the public? 10:31:20AM</p> <p>3 A They are. We have them available at 10:31:22AM</p> <p>4 our information desk. They have the force of</p> <p>5 law.</p> <p>6 Q And what about outside of the county 10:31:27AM</p> <p>7 offices, is it possible to obtain a copy</p> <p>8 somewhere else, a member of the public, that is?</p> <p>9 A A member of the public can come and 10:31:36AM</p> <p>10 get one from us.</p> <p>11 Q Can they go anywhere else? Are they 10:31:39AM</p> <p>12 in a library or on the website?</p> <p>13 MS. ZWILLING: Objection. I don't 10:31:44AM</p> <p>14 know if she's going to know if they're held</p> <p>15 by the public libraries.</p> <p>16 Do you know if they're on the website? 10:31:50AM</p> <p>17 THE WITNESS: I don't know. I don't 10:31:52AM</p> <p>18 believe they're on the website.</p> <p>19 BY MR. GRAFF: 10:31:54AM</p> <p>20 Q Do you know any other way where a 10:31:55AM</p> <p>21 member of the public could get access to a copy</p> <p>22 of the rules other than coming to the</p> <p>23 information desk?</p> <p>24 MS. ZWILLING: Arie, they're directly 10:32:03AM</p> <p>25 across the street on your way back to the</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 36</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 city. You can stick your head in the door</p> <p>3 and get a copy. Literally.</p> <p>4 BY MR. GRAFF: 10:32:13AM</p> <p>5 Q Do they distribute copies at the 10:32:13AM</p> <p>6 information window?</p> <p>7 A Upon request, yes. 10:32:17AM</p> <p>8 Q How long are the Civil Service rules, 10:32:18AM</p> <p>9 in terms of pages, if you can estimate?</p> <p>10 A I think 20 some. 10:32:22AM</p> <p>11 MS. ZWILLING: As a matter of fact, if 10:32:28AM</p> <p>12 you want them, I know I have copies of</p> <p>13 rules. I just don't know if I have the</p> <p>14 latest ones. If you want to check before</p> <p>15 you leave.</p> <p>16 MR. GRAFF: That would be great. 10:32:38AM</p> <p>17 Maybe at the lunch break.</p> <p>18 MS. ZWILLING: Okay. 10:32:43AM</p> <p>19 MR. GRAFF: I ask the court reporter 10:33:13AM</p> <p>20 to mark as CD 1.</p> <p>21 (Whereupon, 30(b)(6) Notice was marked 10:33:30AM</p> <p>22 as DiStefano Exhibit 1 for identification,</p> <p>23 as of this date.)</p> <p>24 BY MR. GRAFF: 10:34:09AM</p> <p>25 Q Ms. DiStefano, if you could just take 10:34:10AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 37</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 a moment to look that over and let me know if</p> <p>3 you've seen the document before? (Handing.)</p> <p>4 A I'm not sure. 10:35:00AM</p> <p>5 Q If I could ask you to please turn your 10:35:00AM</p> <p>6 attention to the second page towards the bottom,</p> <p>7 Number 1.</p> <p>8 A (Witness complies.) 10:35:07AM</p> <p>9 Q If you could take a moment. I'm not 10:35:08AM</p> <p>10 going to read it all into the record. If you</p> <p>11 could read the text of Number 1 and let me know</p> <p>12 when you've had a chance to do that.</p> <p>13 A Okay. I have read Number 1. 10:35:17AM</p> <p>14 Q Can you tell me if you're 10:35:42AM</p> <p>15 knowledgeable and qualified to testify on the</p> <p>16 county's behalf about the matters described in</p> <p>17 Number 1?</p> <p>18 MS. ZWILLING: Objection. 10:35:50AM</p> <p>19 MR. NOVIKOFF: Why don't you ask her 10:35:51AM</p> <p>20 the questions, and then you can make the</p> <p>21 determination whether she is qualified to</p> <p>22 testify on behalf of the county.</p> <p>23 MS. ZWILLING: I would ask that you 10:36:00AM</p> <p>24 proceed in that fashion.</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 38</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 10:36:05AM</p> <p>3 Q Rather than going through number by 10:36:05AM</p> <p>4 number, I would like to ask if you could just</p> <p>5 read through to Number 7 and let me know when</p> <p>6 you've read the text of the document.</p> <p>7 A (Witness complies.) 10:36:16AM</p> <p>8 MS. ZWILLING: Just to move things 10:36:19AM</p> <p>9 along, Arie, most of these items, or</p> <p>10 essentially all of them, pertain to Civil</p> <p>11 Service documents which we previously</p> <p>12 provided to your office. You're certainly</p> <p>13 welcome to question the witness as to the</p> <p>14 meaning of those documents, which I assumed</p> <p>15 you were going to do anyway.</p> <p>16 MR. GRAFF: Yeah. 10:36:42AM</p> <p>17 MS. ZWILLING: Have her explain and 10:36:43AM</p> <p>18 interpret those to you. For obvious</p> <p>19 reasons, I can't let her comment on whether</p> <p>20 she's the best person to answer your</p> <p>21 question.</p> <p>22 MR. NOVIKOFF: I think she is. 10:36:55AM</p> <p>23 MR. GRAFF: I won't ask her those 10:36:58AM</p> <p>24 questions.</p> <p>25 A I have read it. 10:37:29AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 39</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q And without going through each of the 10:37:30AM</p> <p>3 items, is there anything in the list that you</p> <p>4 read that you know you are not knowledgeable</p> <p>5 about or wouldn't be able to speak to?</p> <p>6 MS. ZWILLING: Objection. 10:37:44AM</p> <p>7 You can answer. 10:37:44AM</p> <p>8 A I wouldn't know the minimal 10:37:48AM</p> <p>9 qualifications for dock master without looking</p> <p>10 in our specifications.</p> <p>11 MS. ZWILLING: Arie, if I can just 10:37:55AM</p> <p>12 help things along, with respect to the</p> <p>13 minimum qualifications, I don't know that</p> <p>14 there's anyone on the face of the earth that</p> <p>15 could recite all those qualifications for</p> <p>16 all of those positions by heart. But you</p> <p>17 have been given the written qualification</p> <p>18 sheets. So you're obviously free to</p> <p>19 question her.</p> <p>20 MR. GRAFF: I'll question her. Just 10:38:11AM</p> <p>21 to be clear, it's not for certain that</p> <p>22 everything that I have covers all of this,</p> <p>23 if there's anything else.</p> <p>24 MS. ZWILLING: I understand. If Ms. 10:38:20AM</p> <p>25 DiStefano can't recite them by heart, we're,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 40</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 quite frankly, not going to be able to</p> <p>3 provide you with someone who can recite them</p> <p>4 by heart. But certainly we have given you</p> <p>5 the document listing those qualifications,</p> <p>6 with which she is familiar and can explain</p> <p>7 those to you.</p> <p>8 A There is no such title as police 10:38:33AM</p> <p>9 dispatcher.</p> <p>10 Q Has there ever been such a title 10:38:40AM</p> <p>11 during your employment?</p> <p>12 MS. ZWILLING: Objection. 10:38:42AM</p> <p>13 MR. NOVIKOFF: In the 100-year history 10:38:44AM</p> <p>14 of the Suffolk County Civil Service?</p> <p>15 MR. GRAFF: I just said during her 10:38:47AM</p> <p>16 employment. Maybe if you weren't reading</p> <p>17 the newspaper.</p> <p>18 MR. NOVIKOFF: Trust me, I'm listening 10:38:52AM</p> <p>19 to all your questions, Arie. About two have</p> <p>20 been relevant so far.</p> <p>21 MS. ZWILLING: My objection is 10:38:57AM</p> <p>22 something else, and I'm just going to</p> <p>23 request a clarification. Are you asking if</p> <p>24 there has been a police dispatcher in any</p> <p>25 jurisdiction or are you talking about</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 41</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 specific jurisdictions? Because different</p> <p>3 PDs within the geographical confines of the</p> <p>4 county may have different positions. You</p> <p>5 can ask a general question, if you want, but</p> <p>6 that's not clear to me.</p> <p>7 MR. GRAFF: I did intend to ask a 10:39:19AM</p> <p>8 general question.</p> <p>9 BY MR. GRAFF: 10:39:22AM</p> <p>10 Q During any part of your employment at 10:39:22AM</p> <p>11 Suffolk County, are you aware of any</p> <p>12 jurisdictions or any direction from the</p> <p>13 Department of Civil Service with respect to a</p> <p>14 position of police dispatcher?</p> <p>15 MR. NOVIKOFF: Better form as to time 10:39:37AM</p> <p>16 frame, but still objectionable.</p> <p>17 MS. ZWILLING: You can answer. 10:39:40AM</p> <p>18 A There is no Civil Service title of 10:39:41AM</p> <p>19 police dispatcher.</p> <p>20 Q And does Civil Service -- is there any 10:39:47AM</p> <p>21 classified or Civil Service classified</p> <p>22 position -- withdrawn.</p> <p>23 Do any municipalities within Suffolk 10:40:00AM</p> <p>24 County have the position of police dispatcher?</p> <p>25 MR. NOVIKOFF: Objection. Form. 10:40:07AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 42</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: How would she know 10:40:08AM</p> <p>3 that? You can ask what Civil Service has</p> <p>4 classified for them.</p> <p>5 MR. NOVIKOFF: Exactly. 10:40:13AM</p> <p>6 MS. ZWILLING: She can't speak to what 10:40:14AM</p> <p>7 the internal titles are in the police</p> <p>8 departments. There's a distinction.</p> <p>9 MR. GRAFF: Okay. 10:40:20AM</p> <p>10 BY MR. GRAFF: 10:40:20AM</p> <p>11 Q Does Civil Service classify for any 10:40:21AM</p> <p>12 specific jurisdictions a position within an</p> <p>13 individual jurisdiction of police dispatcher?</p> <p>14 A We use a title public safety 10:40:30AM</p> <p>15 dispatcher.</p> <p>16 MS. ZWILLING: Just to move things 10:40:34AM</p> <p>17 along, Arie. They have the public safety</p> <p>18 title. Different PDs may internally choose</p> <p>19 to call them various other titles, but</p> <p>20 that's not a Civil Service title. That's</p> <p>21 not information Civil Service is going to</p> <p>22 have. That's internal to the PD.</p> <p>23 MR. GRAFF: If I could ask the court 10:40:51AM</p> <p>24 reporter to mark as CD 2 a one-page document</p> <p>25 produced by the county without Bates number,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 43</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 headed "Police Officer."</p> <p>3 (Whereupon, A document headed Police 10:41:01AM</p> <p>4 Officer was marked as DiStefano Exhibit 2</p> <p>5 for identification, as of this date.)</p> <p>6 BY MR. GRAFF: 10:41:27AM</p> <p>7 Q If you could just please look at the 10:41:27AM</p> <p>8 document and let me know if it's a document</p> <p>9 you've seen before. (Handing.)</p> <p>10 A Yes, it is. 10:41:33AM</p> <p>11 Q If you look at the bottom left, it 10:41:34AM</p> <p>12 looks like it's a revision or dated 4-26-02.</p> <p>13 A (Nodding.) 10:41:42AM</p> <p>14 Q Has this document been revised 10:41:43AM</p> <p>15 subsequent to that date?</p> <p>16 A I would have to check. 10:41:46AM</p> <p>17 Q And would you know if -- when the last 10:41:48AM</p> <p>18 revision prior to 2002 was?</p> <p>19 A Not without looking. 10:41:54AM</p> <p>20 MS. ZWILLING: I believe we produced 10:41:56AM</p> <p>21 more than one version of this.</p> <p>22 MR. GRAFF: That may be true. 10:42:01AM</p> <p>23 BY MR. GRAFF: 10:42:09AM</p> <p>24 Q The last subheading, "Necessary 10:42:09AM</p> <p>25 Special Requirements" --</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 44</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A Uh-huh. 10:42:13AM</p> <p>3 Q -- does that have any particular 10:42:13AM</p> <p>4 meaning in the context of Civil Service</p> <p>5 documents?</p> <p>6 A Yes. 10:42:18AM</p> <p>7 Q What does it that mean? 10:42:19AM</p> <p>8 A That applicants must comply with these 10:42:20AM</p> <p>9 things.</p> <p>10 Q And "minimum qualifications," does 10:42:24AM</p> <p>11 that also have a particular meaning in this</p> <p>12 context?</p> <p>13 A Yes. That is what allows the person 10:42:29AM</p> <p>14 to participate in the examination.</p> <p>15 Q When you say "must comply" -- 10:42:35AM</p> <p>16 withdrawn.</p> <p>17 Roughly in the middle of the section, 10:42:41AM</p> <p>18 under Necessary Special Requirements, it states</p> <p>19 that there will be qualifying medical,</p> <p>20 psychological, physical fitness and polygraph</p> <p>21 evaluations.</p> <p>22 A Yes. 10:42:53AM</p> <p>23 Q Are there other documents that define 10:42:54AM</p> <p>24 what those -- Civil Service documents from</p> <p>25 Suffolk County that define what those</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 45</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 evaluations are?</p> <p>3 MS. ZWILLING: Could I just have that 10:43:02AM</p> <p>4 question read back?</p> <p>5 (Whereupon, the referred to portion 10:43:05AM</p> <p>6 was read back by the court reporter: Are</p> <p>7 there other documents that define what those</p> <p>8 -- Civil Service documents from Suffolk</p> <p>9 County that define what those evaluations</p> <p>10 are?)</p> <p>11 MS. ZWILLING: Is your question 10:43:16AM</p> <p>12 whether Civil Service has additional</p> <p>13 documents defining that or whether there are</p> <p>14 some in some existence?</p> <p>15 MR. GRAFF: I meant to ask Civil 10:43:23AM</p> <p>16 Service.</p> <p>17 A Yes. We have specific agility 10:43:26AM</p> <p>18 requirements and more details that's published</p> <p>19 when we announce the examination.</p> <p>20 Q And is that published as part of the 10:43:40AM</p> <p>21 examination announcement or is it a separate</p> <p>22 document?</p> <p>23 A It's attached to the examination 10:43:44AM</p> <p>24 announcement.</p> <p>25 Q And who devises the elements of each 10:43:48AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 46</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 of these evaluations?</p> <p>3 MS. ZWILLING: You're asking who 10:44:00AM</p> <p>4 devises the test?</p> <p>5 MR. GRAFF: Yeah. Who puts together 10:44:02AM</p> <p>6 what a physical fitness test is in this</p> <p>7 context.</p> <p>8 A The state has established standards 10:44:09AM</p> <p>9 statewide for police officer, and we adhere to</p> <p>10 those.</p> <p>11 Q So all of these evaluations are 10:44:18AM</p> <p>12 defined by the state --</p> <p>13 A No, you didn't ask about all. You 10:44:22AM</p> <p>14 asked about one.</p> <p>15 Q Let's go through one by one. The 10:44:25AM</p> <p>16 qualifying medical?</p> <p>17 A That is a state standard. 10:44:28AM</p> <p>18 Q What about the qualifying 10:44:30AM</p> <p>19 psychological?</p> <p>20 A That's county. 10:44:33AM</p> <p>21 Q What about physical fitness? 10:44:37AM</p> <p>22 A That's a state standard. 10:44:39AM</p> <p>23 Q And the polygraph evaluation? 10:44:41AM</p> <p>24 A That's county. 10:44:44AM</p> <p>25 Q And what individual or position title 10:44:49AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 47</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 in the county devises the polygraph evaluation</p> <p>3 that's applicable in this context?</p> <p>4 MS. ZWILLING: Objection. I'm not 10:44:59AM</p> <p>5 certain whether you're asking who determines</p> <p>6 that there should be such a requirement or</p> <p>7 who devises the actual test.</p> <p>8 MR. NOVIKOFF: Also for the record, 10:45:10AM</p> <p>9 any other time any other counsel objects to</p> <p>10 the question, the village joins in in the</p> <p>11 objection, even if not stated.</p> <p>12 MR. CONNOLLY: So does counsel for 10:45:22AM</p> <p>13 Mr. Hesse.</p> <p>14 MR. GRAFF: I don't mean the 10:45:27AM</p> <p>15 individual questions that are asked of a</p> <p>16 polygraph examinee, but the general</p> <p>17 requirements for structuring a polygraph</p> <p>18 exam, who implements that and comes up with</p> <p>19 that in this context.</p> <p>20 MS. ZWILLING: I'm still not sure I 10:45:38AM</p> <p>21 understand the question. Are you asking who</p> <p>22 makes the decision there should be a</p> <p>23 polygraph test?</p> <p>24 MR. GRAFF: Yes. 10:45:44AM</p> <p>25 A The police, Suffolk County Police 10:45:45AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 48</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Department asked for that as a necessary special</p> <p>3 requirement.</p> <p>4 Q And when did they make that request? 10:45:53AM</p> <p>5 A I'm not sure. They used to do it, and 10:46:03AM</p> <p>6 they wanted it specifically noted on the</p> <p>7 specification at some point, so we did that.</p> <p>8 They did that as part of their background</p> <p>9 investigation.</p> <p>10 Q And was it made a necessary special 10:46:16AM</p> <p>11 requirement within the last 10 years?</p> <p>12 A I think so. 10:46:21AM</p> <p>13 Q And who in the county was responsible 10:46:22AM</p> <p>14 for the decision to make it a necessary special</p> <p>15 requirement?</p> <p>16 A Alan Schneider in the Civil Service 10:46:34AM</p> <p>17 Department in response to the police</p> <p>18 department's is request.</p> <p>19 Q And did the police department explain 10:46:40AM</p> <p>20 why it was making that request?</p> <p>21 A Because they'd been doing it anyway as 10:46:50AM</p> <p>22 part of their background investigation, and they</p> <p>23 just wanted it set forth on the specification.</p> <p>24 Q And do you have any information as to 10:46:59AM</p> <p>25 why they were doing it in the first place?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 49</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: Why the police 10:47:04AM</p> <p>3 department did that?</p> <p>4 MR. GRAFF: It might have been 10:47:06AM</p> <p>5 communicated in the context of asking for it</p> <p>6 to be a special necessary qualification.</p> <p>7 MS. ZWILLING: If they told her about 10:47:13AM</p> <p>8 it, she can speak to that.</p> <p>9 A I don't know. 10:47:15AM</p> <p>10 Q And the psychological examination, 10:47:20AM</p> <p>11 who's responsible -- first of all, other than</p> <p>12 the examination announcement, is there any other</p> <p>13 written document created by Suffolk County that</p> <p>14 provides further detail on what the</p> <p>15 psychological evaluation involves?</p> <p>16 A I'm not aware of any. 10:47:41AM</p> <p>17 Q And who administers the psychological 10:47:45AM</p> <p>18 evaluations?</p> <p>19 A We contract that. 10:47:48AM</p> <p>20 Q And are there any directions or 10:47:50AM</p> <p>21 standards or guidelines that are provided to the</p> <p>22 contractors who conduct those evaluations with</p> <p>23 respect to what they should be doing?</p> <p>24 MS. ZWILLING: Objection. 10:48:05AM</p> <p>25 Arie, I just have to ask what the 10:48:05AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 50</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 relevance of this is, because as I</p> <p>3 understand it, there's no suggestion that</p> <p>4 your clients were somehow not meeting these</p> <p>5 qualifications.</p> <p>6 MR. NOVIKOFF: Isn't the issue, 10:48:18AM</p> <p>7 Arie -- and I don't think it's an issue,</p> <p>8 because I think we've had eight different</p> <p>9 witnesses testify. I think we all</p> <p>10 stipulated that at a certain point in time</p> <p>11 there were a number of officers at Ocean</p> <p>12 Beach that were not certified and then at a</p> <p>13 certain point in time, some of them became</p> <p>14 certified and some of them didn't.</p> <p>15 MS. ZWILLING: If you have any doubts 10:48:40AM</p> <p>16 about that, pose those questions to her.</p> <p>17 Let's narrow this down so we don't go all</p> <p>18 over the place. I think she's perfectly</p> <p>19 capable to speak to those larger issues.</p> <p>20 MR. GRAFF: I'd like to get an answer 10:48:52AM</p> <p>21 to the question that I posed.</p> <p>22 MS. ZWILLING: Well, why a bunch of 10:48:55AM</p> <p>23 civil servants would tell psychologists how</p> <p>24 to run a psychological exam --</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 51</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 10:49:02AM</p> <p>3 Q Is there something that explains 10:49:03AM</p> <p>4 generally what the objectives of the exam are</p> <p>5 and why -- how the exam should be conducted to</p> <p>6 meet the interests of the county?</p> <p>7 MS. ZWILLING: The exam is done by 10:49:12AM</p> <p>8 psychologists. It's a psychological exam.</p> <p>9 It's not a Civil Service exam.</p> <p>10 MR. NOVIKOFF: Why couldn't all of 10:49:19AM</p> <p>11 this be done by document request, asking for</p> <p>12 those documents. To the extent there's any</p> <p>13 document that explains or articulates the</p> <p>14 rationale behind any particular test that's</p> <p>15 in the possession of the county, they will</p> <p>16 produce it. I'm sure the county would</p> <p>17 produce that. Respectfully, instead of</p> <p>18 spending an hour and a half asking this</p> <p>19 witness questions that she would only be</p> <p>20 testifying to based upon a document, make</p> <p>21 that request.</p> <p>22 MR. GRAFF: That would be great. If 10:49:43AM</p> <p>23 there are documents that have not been</p> <p>24 produced that exist that define that,</p> <p>25 then --</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 52</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: Conceivably anything 10:49:49AM</p> <p>3 and everything hasn't been produced. What I</p> <p>4 will say with respect to the psychological,</p> <p>5 if the county has documents relating to the</p> <p>6 psychologicals that have not been produced</p> <p>7 and we legally can produce them, we will.</p> <p>8 And I say legally because there may be state</p> <p>9 law restrictions on us turning over Civil</p> <p>10 Service examination materials without some</p> <p>11 sort of confidentiality agreement. Or if</p> <p>12 they're state materials, we may not be</p> <p>13 permitted to turn them over at all.</p> <p>14 MR. GRAFF: Okay. 10:50:21AM</p> <p>15 MS. ZWILLING: Short of that, 10:50:22AM</p> <p>16 certainly we would produce them.</p> <p>17 MR. GRAFF: Two small things. I don't 10:50:25AM</p> <p>18 think I'm disagreeing on that. In the event</p> <p>19 that you determine that you cannot legally</p> <p>20 produce them, I would ask that you obviously</p> <p>21 let us know that they exist.</p> <p>22 MS. ZWILLING: I would. And you are 10:50:36AM</p> <p>23 free to get them from the state at that</p> <p>24 point, because some of these things are</p> <p>25 state documents. If there is something that</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 53</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 is not a state document, we may be able to</p> <p>3 turn it over pursuant to a confidentiality</p> <p>4 order.</p> <p>5 MR. GRAFF: There's actually a 10:50:48AM</p> <p>6 confidentiality order in place.</p> <p>7 MS. ZWILLING: I know. My concern 10:50:51AM</p> <p>8 here is to the extent that the state</p> <p>9 sometimes creates documents related to Civil</p> <p>10 Service or imposes restrictions upon us as</p> <p>11 to what we can do with them, even though all</p> <p>12 parties may agree to keep things</p> <p>13 confidential, the state may not be</p> <p>14 comfortable with that.</p> <p>15 MR. GRAFF: I understand. If that's 10:51:09AM</p> <p>16 the case, if you can say there are documents</p> <p>17 but pursuant to state requirements we're not</p> <p>18 producing them, so we can address that.</p> <p>19 MS. ZWILLING: I don't know that there 10:51:17AM</p> <p>20 are documents. Certainly, the state issue</p> <p>21 permeates all Civil Service document</p> <p>22 questions.</p> <p>23 MR. NOVIKOFF: Have you made a request 10:51:24AM</p> <p>24 from the state? I mean, I think that would</p> <p>25 be something you would want to do.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 54</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MR. GRAFF: Strategies for dealing 10:51:28AM</p> <p>3 with the state is better addressed off the</p> <p>4 record.</p> <p>5 MR. NOVIKOFF: Like you indicated to 10:51:35AM</p> <p>6 me in an E-mail a week ago, we're two years</p> <p>7 into the litigation, and I would've thought</p> <p>8 that by now any information you would've</p> <p>9 needed to get from the state you could have</p> <p>10 gotten. Again, you know, listen, I'll stay</p> <p>11 here as long as we have to, but it just</p> <p>12 seems that you're asking this witness to</p> <p>13 opine on information that is contained</p> <p>14 within a document --</p> <p>15 MR. GRAFF: We're about to move on 10:51:51AM</p> <p>16 from that. We hit on a constructive way --</p> <p>17 MS. ZWILLING: Generally speaking, 10:51:56AM</p> <p>18 professional examinations are conducted by</p> <p>19 professionals. Civil Service doesn't tell</p> <p>20 the doctor how to do a physical. We don't</p> <p>21 tell psychologists how to conduct a</p> <p>22 psychological exam. That's why we hire</p> <p>23 professionals.</p> <p>24 MR. GRAFF: Okay. The same thing 10:52:09AM</p> <p>25 we've been discussing with respect to</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 55</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 psychological, if I could ask with respect</p> <p>3 to the other qualifying exams in this line,</p> <p>4 medical, physical fitness, polygraph, to the</p> <p>5 extent, subject to --</p> <p>6 MS. ZWILLING: Well, the physical 10:52:19AM</p> <p>7 examination is not a written exam. It's a</p> <p>8 medical physical. Like if you go to a</p> <p>9 doctor and have an annual physical, you</p> <p>10 know, it's akin to that. These are not</p> <p>11 written examinations.</p> <p>12 MR. GRAFF: Okay. 10:52:29AM</p> <p>13 MR. NOVIKOFF: And your next question 10:52:31AM</p> <p>14 to this witness will be what is the basis</p> <p>15 for giving a physical exam, and this witness</p> <p>16 again will either be able to testify based</p> <p>17 upon something she has read or she's going</p> <p>18 to say I don't know, but there's probably a</p> <p>19 document out there that explains it.</p> <p>20 MR. GRAFF: Subject to everything you 10:52:47AM</p> <p>21 said, that's all --</p> <p>22 MS. ZWILLING: If there are documents 10:52:49AM</p> <p>23 and we can disclose them pursuant to the</p> <p>24 considerations I've already mentioned, we</p> <p>25 can give you them. But I just want to make</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 56</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 clear that these are not necessarily written</p> <p>3 exams and they're expert exams done by</p> <p>4 professionals in that discipline. They're</p> <p>5 not written Civil Service tests.</p> <p>6 MR. GRAFF: Okay. I do understand 10:53:07AM</p> <p>7 that. I appreciate the explanation.</p> <p>8 BY MR. GRAFF: 10:53:13AM</p> <p>9 Q One more question on this line before 10:53:14AM</p> <p>10 we can move on from it.</p> <p>11 What is the basis for conducting a 10:53:16AM</p> <p>12 polygraph evaluation in this context?</p> <p>13 MR. NOVIKOFF: Objection to form. I 10:53:22AM</p> <p>14 don't know what that question means.</p> <p>15 MS. ZWILLING: Whose basis? 10:53:24AM</p> <p>16 BY MR. GRAFF: 10:53:26AM</p> <p>17 Q What is the purpose of conducting a 10:53:26AM</p> <p>18 polygraph evaluation in this context?</p> <p>19 MR. NOVIKOFF: Objection to form. 10:53:32AM</p> <p>20 MS. ZWILLING: Objection. It's not 10:53:33AM</p> <p>21 her requirement. I don't understand the</p> <p>22 question. It was not her decision to</p> <p>23 request a polygraph exam.</p> <p>24 MR. GRAFF: Right. But she's 10:53:42AM</p> <p>25 appearing as the county's designee on</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 57</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 qualifications. If she knows what the</p> <p>3 purpose of a qualification is, I'm certainly</p> <p>4 entitled to ask.</p> <p>5 MR. NOVIKOFF: She'll know what the 10:53:50AM</p> <p>6 qualifications are, but to ask this witness</p> <p>7 the purpose of the qualification, you're</p> <p>8 asking this witness to get into the mind of</p> <p>9 either the legislative body or the executive</p> <p>10 body that at one point in time, perhaps a</p> <p>11 century ago, have set forth these</p> <p>12 requirements.</p> <p>13 MS. ZWILLING: Or the police 10:54:07AM</p> <p>14 department. And I can assure you Civil</p> <p>15 Service does not read the mind of the police</p> <p>16 department. If it's been communicated to</p> <p>17 her, she can relate that to her. But I</p> <p>18 don't think she can explain why the police</p> <p>19 department made this request if she was not</p> <p>20 told that.</p> <p>21 MR. GRAFF: All I want to know things 10:54:23AM</p> <p>22 she can answer.</p> <p>23 MR. NOVIKOFF: You have to ask the 10:54:27AM</p> <p>24 right question, Arie.</p> <p>25 MS. ZWILLING: If you want to ask her 10:54:29AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 58	Page 59
<p>1 CYNTHIA DISTEFANO</p> <p>2 if any of that was communicated to her,</p> <p>3 that's certainly proper.</p> <p>4 MR. GRAFF: I want to ask both 10:54:37AM</p> <p>5 questions.</p> <p>6 BY MR. GRAFF: 10:54:39AM</p> <p>7 Q Do you know what the purpose of the 10:54:39AM</p> <p>8 polygraph evaluation is in this context?</p> <p>9 MS. ZWILLING: Objection. 10:54:44AM</p> <p>10 MR. NOVIKOFF: Objection. 10:54:45AM</p> <p>11 MS. ZWILLING: If she can answer, she 10:54:=</p> <p>47AM</p> <p>12 can answer.</p> <p>13 A I have an opinion. I don't have any 10:54:49AM</p> <p>14 specific --</p> <p>15 MS. ZWILLING: She's not going to give 10:54:52AM</p> <p>16 you her opinion.</p> <p>17 BY MR. GRAFF: 10:54:54AM</p> <p>18 Q Was it ever communicated to you? 10:54:55AM</p> <p>19 A No, it was not. 10:54:57AM</p> <p>20 Q Is the basis for the opinion your 10:54:58AM</p> <p>21 personal belief or is it based on knowledge or</p> <p>22 experience with Civil Service?</p> <p>23 MS. ZWILLING: Objection. It's her 10:55:05AM</p> <p>24 personal opinion. Her personal opinion,</p> <p>25 whether she thinks it's a good idea, bad</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 idea, poor idea, wonderful idea is</p> <p>3 irrelevant.</p> <p>4 MR. NOVIKOFF: Palpably. 10:55:16AM</p> <p>5 MS. ZWILLING: Especially since she 10:55:19AM</p> <p>6 didn't make the decision.</p> <p>7 MR. GRAFF: Can she answer the 10:55:22AM</p> <p>8 question?</p> <p>9 MS. ZWILLING: No. I'm going to ask 10:55:24AM</p> <p>10 you to move on.</p> <p>11 MR. GRAFF: So just to be clear. I'm 10:55:25AM</p> <p>12 not trying to be argumentative. Are you</p> <p>13 telling the witness not to answer the</p> <p>14 question?</p> <p>15 MS. ZWILLING: I'm asking you to move 10:55:31AM</p> <p>16 on at this time. I'm not saying you will</p> <p>17 not get an answer to the question at some</p> <p>18 point. I'm asking you to move on, and we</p> <p>19 can pick it up again later.</p> <p>20 MR. GRAFF: If we could mark it then 10:55:40AM</p> <p>21 so we can find that.</p> <p>22 BY MR. GRAFF: 10:55:43AM</p> <p>23 Q The last full sentence on that page, 10:55:43AM</p> <p>24 if you could just read it and let me know when</p> <p>25 you've read that sentence.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 60	Page 61
<p>1 CYNTHIA DISTEFANO</p> <p>2 A The MPTC? I've read that. 10:55:56AM</p> <p>3 Q You're abbreviating Municipal Training 10:56:04AM</p> <p>4 Police Council?</p> <p>5 A Yes. 10:56:08AM</p> <p>6 Q What is a police officer training 10:56:20AM</p> <p>7 course recognized by the state municipal</p> <p>8 training council? What is that referring to?</p> <p>9 A The police academy training. 10:56:26AM</p> <p>10 Q And is that a police academy 10:56:29AM</p> <p>11 training -- in the context of this document, is</p> <p>12 that police academy training offered in any</p> <p>13 particular part of the state?</p> <p>14 A It's offered in the Suffolk County 10:56:39AM</p> <p>15 Police Academy.</p> <p>16 Q Could you identify what this document 10:56:45AM</p> <p>17 is?</p> <p>18 A It is a job specification for a 10:56:48AM</p> <p>19 full-time police officer.</p> <p>20 Q Is that a full-time police officer 10:56:53AM</p> <p>21 within a jurisdiction in Suffolk County</p> <p>22 specifically?</p> <p>23 A Within any jurisdiction in Suffolk 10:56:58AM</p> <p>24 County.</p> <p>25 Q So for purposes of these 10:57:03AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 qualifications, is a police officer training</p> <p>3 course recognized by the state but one outside</p> <p>4 of Suffolk County, does that satisfy this</p> <p>5 requirement?</p> <p>6 MR. NOVIKOFF: Objection to form. 10:57:16AM</p> <p>7 MS. ZWILLING: Arie, it's a state 10:57:19AM</p> <p>8 requirement. It's not Civil Service's</p> <p>9 requirement. New York does not allow people</p> <p>10 to have status of peace officer until they</p> <p>11 complete a state-approved academy.</p> <p>12 MR. GRAFF: I understand. But for the 10:57:33AM</p> <p>13 jurisdiction of Suffolk County, does that</p> <p>14 state approved police academy need to be in</p> <p>15 Suffolk County or can it be a police academy</p> <p>16 in another county in the state.</p> <p>17 A It can be anywhere. This is for -- 10:57:44AM</p> <p>18 Suffolk County police officers go to this one.</p> <p>19 MR. NOVIKOFF: Again, I don't want to 10:57:50AM</p> <p>20 be sounding like a broken record, but I want</p> <p>21 to mark for the record again that you're</p> <p>22 asking a lot of questions that are palpably</p> <p>23 irrelevant. We have two issues, as far as I</p> <p>24 see, regarding to Suffolk County Civil</p> <p>25 Service. One, the certification issue,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 62</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 which you have talked about at length with</p> <p>3 numerous witnesses, which I think for the</p> <p>4 most part many of the facts are undisputed.</p> <p>5 And two, the allegation that somebody at the</p> <p>6 Suffolk County Civil Service was engaged in</p> <p>7 a conspiracy with someone over at Ocean</p> <p>8 Beach concerning these five plaintiffs.</p> <p>9 What we're doing for the last hour and 10:58:17AM</p> <p>10 a half, I just think it's borderline</p> <p>11 harassment, and it's palpably improper. I</p> <p>12 can't instruct the witness not to answer.</p> <p>13 I'm not going to stop the deposition. I'm</p> <p>14 going to explain to Judge Boyle that on this</p> <p>15 issue, virtually all of the facts are</p> <p>16 uncontested and not disputed. I say it for</p> <p>17 the record.</p> <p>18 MR. GRAFF: Was there a question 10:58:45AM</p> <p>19 pending?</p> <p>20 MR. NOVIKOFF: Certainly regarding the 10:58:49AM</p> <p>21 issue of certification.</p> <p>22 MR. GRAFF: Was there a question 10:58:57AM</p> <p>23 pending when Mr. Novikoff made his comment?</p> <p>24 (Whereupon, the referred to portion 10:59:15AM</p> <p>25 was read back by the court reporter: So for</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 63</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 purposes of these qualifications, is a</p> <p>3 police officer training course recognized by</p> <p>4 the state but one outside of Suffolk County,</p> <p>5 does that satisfy this requirement?)</p> <p>6 MS. ZWILLING: With respect to which 10:59:18AM</p> <p>7 police department? You're asking a question</p> <p>8 that I think assumes information that may</p> <p>9 not necessarily be assumed. This may be</p> <p>10 specs or qualifications applicable to all</p> <p>11 police officers throughout the state, but</p> <p>12 individual police departments may have their</p> <p>13 own unique requirements.</p> <p>14 MR. GRAFF: I don't want the question 10:59:43AM</p> <p>15 to be unclear.</p> <p>16 MS. ZWILLING: And she certainly can't 10:59:46AM</p> <p>17 speak to what the police department in</p> <p>18 Lackawanna, New York requires.</p> <p>19 BY MR. GRAFF: 10:59:51AM</p> <p>20 Q Can a police department in Suffolk 10:59:52AM</p> <p>21 County have requirements that are less stringent</p> <p>22 than the requirements on this page?</p> <p>23 A No. 10:59:58AM</p> <p>24 Q And then going back to my last 11:00:02AM</p> <p>25 question. Whether or not there are additional</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 64</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 requirements in an individual police department,</p> <p>3 as far as what the requirement of Suffolk County</p> <p>4 Civil Service means, does a certificate from a</p> <p>5 police officer training course recognized by the</p> <p>6 state but not in Suffolk County satisfy this</p> <p>7 requirement?</p> <p>8 MR. NOVIKOFF: Objection to form. I 11:00:26AM</p> <p>9 don't even understand it.</p> <p>10 A I don't really understand the 11:00:31AM</p> <p>11 question.</p> <p>12 MS. ZWILLING: Arie, I know the answer 11:00:35AM</p> <p>13 to the question, and that's the reason why I</p> <p>14 know you're not going to be able to get an</p> <p>15 answer to the question. The state -- can we</p> <p>16 go off the record.</p> <p>17 (Whereupon, a discussion was held off 11:00:45AM</p> <p>18 the record.)</p> <p>19 BY MR. GRAFF: 11:02:20AM</p> <p>20 Q Ms. DiStefano, I know it's a state 11:02:31AM</p> <p>21 requirement, the Municipal Police Training</p> <p>22 Council. If you know, is there such a thing as</p> <p>23 a part-time municipal police officer training</p> <p>24 program versus a full-time?</p> <p>25 MR. NOVIKOFF: Objection to form. 11:02:48AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 65</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: Are you asking about a 11:02:52AM</p> <p>3 police academy program?</p> <p>4 MR. GRAFF: Recognized by New York 11:02:56AM</p> <p>5 State Municipal Training Council that would</p> <p>6 satisfy this requirement, are there</p> <p>7 subcategories, full-time or part-time, if</p> <p>8 she knows.</p> <p>9 A I'm not sure if it's the same length 11:03:08AM</p> <p>10 of time. I think it's shorter, but I'm not</p> <p>11 sure. They still need the municipal police</p> <p>12 training certificate.</p> <p>13 MR. GRAFF: I'll ask the court 11:03:30AM</p> <p>14 reporter to please mark as CD 3 a two-page</p> <p>15 document produced by the county without</p> <p>16 Bates number, headed "Police officer</p> <p>17 part-time/seasonal."</p> <p>18 (Whereupon, police officer 11:03:41AM</p> <p>19 part-time/seasonal was marked as DiStefano</p> <p>20 Exhibit 3 for identification, as of this</p> <p>21 date.)</p> <p>22 BY MR. GRAFF: 11:04:10AM</p> <p>23 Q Ms. DiStefano, if you can just take a 11:04:11AM</p> <p>24 moment to look over the document and let me know</p> <p>25 if it's something you've seen before. (Handing.)</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 66

Page 67

1 CYNTHIA DISTEFANO
2 A It is. 11:04:19AM
3 **Q And could you identify it, please? 11:04:19AM**
4 A It's the Civil Service job 11:04:21AM
5 specification for a part-time seasonal police
6 officer.
7 **Q And if you look under, again, the 11:04:27AM**
8 **heading "Necessary Special Requirements," this**
9 **time Number 3, it states, "Candidates must**
10 **posses a police officer training certificate**
11 **recognized by the New York State Municipal**
12 **Police Training Council.**
13 A Uh-huh. 11:04:43AM
14 **Q If you recall in the last exhibit it 11:04:44AM**
15 **said that after appointment, candidates will be**
16 **required to complete that program.**
17 A Uh-huh. 11:04:52AM
18 **Q Is that a distinction with substance 11:04:54AM**
19 **or is it just different drafting language?**
20 MR. NOVIKOFF: Objection. Form. 11:05:00AM
21 MS. ZWILLING: Objection. 11:05:00AM
22 BY MR. GRAFF: 11:05:01AM
23 **Q Is there a difference between those 11:05:01AM**
24 **two requirements?**
25 MR. NOVIKOFF: Well, you just stated 11:05:04AM
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Page 68

1 CYNTHIA DISTEFANO
2 communicated to her or she has personal
3 knowledge, I think it's an appropriate
4 question. If you're asking her if she has
5 an opinion, it's inappropriate.
6 MR. GRAFF: I asked if she knows. 11:06:05AM
7 A A police officer full-time is hired 11:06:07AM
8 from the list. He goes to the academy. He
9 serves an 18-month probationary period. He
10 starts in the academy. He earns his municipal
11 police training certificate. He's not out on
12 the street functioning as a police officer.
13 He's a student in the police academy. A
14 part-time police officer is hired to go to work
15 immediately. So he needs that MPTC in order to
16 do that. Most times they go to whatever
17 training they need before they actually are
18 hired and hit the streets.
19 **Q And in this context, is there a 11:06:47AM**
20 **difference between appointment as it's used**
21 **after appointment versus being hired?**
22 MR. NOVIKOFF: Objection. In what 11:06:57AM
23 context?
24 MS. ZWILLING: Objection. 11:06:58AM
25
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1 CYNTHIA DISTEFANO
2 that there is. From the plain language of
3 the document, there seems to be a
4 difference.
5 MS. ZWILLING: The documents contain 11:05:12AM
6 different language.
7 **Q And then practice as applied by the 11:05:15AM**
8 **Department of Civil Service, are these applied**
9 **as written?**
10 MR. NOVIKOFF: Objection. Foundation. 11:05:21AM
11 MS. ZWILLING: You can answer. 11:05:28AM
12 A Of course they're applied as written. 11:05:30AM
13 That's why they're written.
14 **Q Do you know why for a part-time 11:05:34AM**
15 **seasonal the candidate must posses it, whereas**
16 **for a police officer, the candidate must**
17 **complete the program after completing the**
18 **program?**
19 MR. NOVIKOFF: Objection. 11:05:47AM
20 MS. ZWILLING: Objection. 11:05:47AM
21 Did the state ever tell you that? 11:05:48AM
22 MR. NOVIKOFF: Does she know based on 11:05:51AM
23 personal knowledge or does she have an
24 opinion? Or has the reason been
25 communicated to her? If it's been
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Page 69

1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 11:07:00AM
3 **Q Is appointment the same as hiring? 11:07:01AM**
4 A Yes. 11:07:04AM
5 **Q So in the context of a police officer, 11:07:06AM**
6 **a police officer is hired and then after being**
7 **hired gets the -- goes into the training program**
8 **and then begins working after completing it?**
9 MS. ZWILLING: Objection. Which kind 11:07:16AM
10 of police officer?
11 MR. GRAFF: The full-time. 11:07:18AM
12 MR. NOVIKOFF: Then say it. 11:07:20AM
13 MS. ZWILLING: Arie, if it helps 11:07:22AM
14 things, when the SCPD hires officers that
15 have been working with the New York City
16 Police Department up until the day before,
17 they begin the academy and go through the
18 same training program as recruits off the
19 street who never did any law enforcement in
20 their life.
21 BY MR. GRAFF: 11:07:40AM
22 **Q And Ms. DiStefano, do you agree with 11:07:40AM**
23 **what Ms. Zwilling just explained?**
24 A Yes. 11:07:46AM
25 **Q During the period after employment, 11:07:47AM**
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<p style="text-align: right;">Page 70</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 when the full-time police officer is pursuing</p> <p>3 that certificate, does the police officer earn</p> <p>4 salary in the same way that they will upon</p> <p>5 completion of the certificate program?</p> <p>6 A They're paid from the date they're 11:08:01AM</p> <p>7 appointed, hired.</p> <p>8 Q And is it the same rate of pay or is 11:08:04AM</p> <p>9 there a reduced rate of pay during that</p> <p>10 training?</p> <p>11 A They have a step system in their 11:08:10AM</p> <p>12 salary plan. You can have that, I'm sure.</p> <p>13 Q And how long does -- in the context of 11:08:18AM</p> <p>14 full-time police officers, what length of time</p> <p>15 does it take to complete the municipal police</p> <p>16 officer training program?</p> <p>17 MS. ZWILLING: Are you asking how long 11:08:26AM</p> <p>18 the academy training is? I don't know that</p> <p>19 we're going to get into any commentary on</p> <p>20 whether or not an officer satisfies state</p> <p>21 requirements.</p> <p>22 MR. GRAFF: I'm not asking about state 11:08:39AM</p> <p>23 requirements.</p> <p>24 MS. ZWILLING: That's why I'm asking. 11:08:41AM</p> <p>25 Is your question how long the academy</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 71</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 training is?</p> <p>3 MR. GRAFF: No. 11:08:45AM</p> <p>4 BY MR. GRAFF: 11:08:45AM</p> <p>5 Q Is there any Suffolk County rule or 11:08:46AM</p> <p>6 direction that has any bearing on the period of</p> <p>7 time between appointment and completion of that</p> <p>8 program to satisfy that requirement?</p> <p>9 MS. ZWILLING: Civil Service 11:09:00AM</p> <p>10 requirement or PD requirement?</p> <p>11 MR. GRAFF: Civil Service. I 11:09:02AM</p> <p>12 understand that's separate from PD</p> <p>13 requirement.</p> <p>14 BY MR. GRAFF: 11:09:07AM</p> <p>15 Q Does Civil Service have any 11:09:08AM</p> <p>16 specification, requirement with respect to how</p> <p>17 long after appointment an appointee has to</p> <p>18 complete that training program?</p> <p>19 A There's no time set forth on the 11:09:17AM</p> <p>20 specification.</p> <p>21 Q If we could turn back, actually, to 11:09:29AM</p> <p>22 CD 2 for police officer.</p> <p>23 A Yes. 11:09:33AM</p> <p>24 Q How long is the probationary period 11:09:33AM</p> <p>25 for the police officer?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 72</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A Eighteen months. 11:09:36AM</p> <p>3 Q And is it possible that a police 11:09:37AM</p> <p>4 officer could satisfy this police officer</p> <p>5 training council requirement after -- over a</p> <p>6 period of time longer than 18 months? That is,</p> <p>7 could a police officer become a full-time</p> <p>8 non-probationary police officer before having</p> <p>9 satisfied this training requirement? And again,</p> <p>10 I'm not asking about whether or not any</p> <p>11 individual police departments have any rules.</p> <p>12 I'm only asking with respect to any rules by</p> <p>13 Suffolk County.</p> <p>14 MR. NOVIKOFF: Objection. Form. 11:10:21AM</p> <p>15 MS. ZWILLING: Objection. There may 11:10:21AM</p> <p>16 or may not be Civil Service rules, but every</p> <p>17 police department has their own rule. If</p> <p>18 you're asking about Suffolk County, you're</p> <p>19 including the Suffolk County Police</p> <p>20 Department.</p> <p>21 MR. GRAFF: Suffolk County Civil 11:10:34AM</p> <p>22 Service.</p> <p>23 MS. ZWILLING: Do they have rules in 11:10:35AM</p> <p>24 addition to what the PD may have?</p> <p>25 MR. GRAFF: Yes. Do they have any of 11:10:38AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 73</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 their own rules that would bear on the</p> <p>3 question that I asked.</p> <p>4 MR. NOVIKOFF: I don't even know what 11:10:41AM</p> <p>5 the question is anymore, so I'm objecting to</p> <p>6 the form.</p> <p>7 MS. ZWILLING: I think state law 11:10:43AM</p> <p>8 prohibits anybody going out in the street</p> <p>9 until they've been through a police academy.</p> <p>10 BY MR. GRAFF: 11:10:49AM</p> <p>11 Q My question now -- and it might have 11:10:49AM</p> <p>12 become confused. The question that I'm asking</p> <p>13 is: Can a police officer complete their</p> <p>14 probationary period and be a full-time</p> <p>15 competitive class police officer before having</p> <p>16 satisfied this last requirement?</p> <p>17 MS. ZWILLING: The state says they 11:11:10AM</p> <p>18 can't. It's a state requirement. Arie,</p> <p>19 respectfully, your question doesn't make</p> <p>20 sense. The state says you can't function as</p> <p>21 a police officer until you fulfill our</p> <p>22 educational requirement. So what is your</p> <p>23 question then? You're asking us if Suffolk</p> <p>24 County allows -- if Civil Service allows</p> <p>25 people to act as police officers that don't</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 74</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 comply with state requirements?</p> <p>3 MR. GRAFF: No. I'm asking about 11:11:34AM</p> <p>4 their status, whether they have -- whether</p> <p>5 they have the absence of protections that is</p> <p>6 characteristics of a probationary employee</p> <p>7 or whether they can become a full-time</p> <p>8 employee, non-probationary employee before</p> <p>9 having obtained the certificate.</p> <p>10 MR. NOVIKOFF: Objection to form. 11:11:54AM</p> <p>11 MS. ZWILLING: It's apples and 11:11:55AM</p> <p>12 oranges.</p> <p>13 MR. NOVIKOFF: What is the relevancy 11:11:57AM</p> <p>14 of this? Is there any dispute that any of</p> <p>15 your clients or any of the officers at issue</p> <p>16 in this case didn't have -- didn't go to the</p> <p>17 police school and get that qualification?</p> <p>18 MS. ZWILLING: You know, probationary 11:12:10AM</p> <p>19 periods are matters of days on the calendar.</p> <p>20 MR. GRAFF: Right. 11:12:14AM</p> <p>21 MS. ZWILLING: Okay. This is 11:12:15AM</p> <p>22 something -- it's an educational requirement</p> <p>23 that the state imposes.</p> <p>24 MR. NOVIKOFF: Why are you talking 11:12:21AM</p> <p>25 about full-time employees? Isn't this whole</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 75</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 case about part-time/seasonal? I mean if</p> <p>3 you want to address the qualifications for</p> <p>4 that classification, I completely</p> <p>5 understand.</p> <p>6 MR. GRAFF: Maybe I can phrase it 11:12:37AM</p> <p>7 differently.</p> <p>8 BY MR. GRAFF: 11:12:38AM</p> <p>9 Q Can a probationary police officer 11:12:39AM</p> <p>10 satisfactorily complete their probationary</p> <p>11 period without having actually completed the</p> <p>12 municipal police officer training program?</p> <p>13 MS. ZWILLING: That depends on what 11:12:51AM</p> <p>14 the PD allows.</p> <p>15 MR. GRAFF: I'm only asking as far as 11:12:54AM</p> <p>16 Suffolk County Civil Service.</p> <p>17 MR. NOVIKOFF: Can they or would they 11:12:57AM</p> <p>18 be in violation of something if they did?</p> <p>19 MR. GRAFF: Would they be in violation 11:13:01AM</p> <p>20 of something --</p> <p>21 MS. ZWILLING: The witness can't 11:13:03AM</p> <p>22 comment on whether people comply with state</p> <p>23 law.</p> <p>24 MR. GRAFF: I'm not asking about state 11:13:08AM</p> <p>25 law. I'm asking about any law specific to</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 76</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Civil Service.</p> <p>3 MS. ZWILLING: I'm not trying to be 11:13:12AM</p> <p>4 difficult, Arie. I understand there might</p> <p>5 be some legitimate questions here, but the</p> <p>6 way you're phrasing them really goes beyond</p> <p>7 that and is really not driving at any useful</p> <p>8 information. I think we're just not getting</p> <p>9 the nub of what you're trying to ask.</p> <p>10 Are you asking will Civil Service 11:13:27AM</p> <p>11 certify people as having permanent</p> <p>12 appointments as police officers that</p> <p>13 don't -- that haven't trained in the</p> <p>14 academy? Is that your question?</p> <p>15 MR. GRAFF: Sure. Yes, yes. 11:13:39AM</p> <p>16 MR. NOVIKOFF: Great. 11:13:40AM</p> <p>17 A For a full-time police officer? 11:13:41AM</p> <p>18 Q Yes. 11:13:43AM</p> <p>19 A No. The police would not keep them. 11:13:44AM</p> <p>20 MS. ZWILLING: The reality, Arie, is 11:13:47AM</p> <p>21 that no PD is going to allow someone</p> <p>22 permanent status if they haven't gone</p> <p>23 through the academy. There are training</p> <p>24 requirements beyond police academies.</p> <p>25 That's only one of the minimums. There's</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 77</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 training beyond that that an officer has to</p> <p>3 complete before they can get permanent</p> <p>4 status.</p> <p>5 MR. GRAFF: Okay. I'm done with that 11:14:05AM</p> <p>6 question.</p> <p>7 BY MR. GRAFF: 11:14:11AM</p> <p>8 Q Turning back to CD 3, Number 4 states, 11:14:12AM</p> <p>9 "Candidates must successful pass a qualifying</p> <p>10 psychological evaluation authorized by Suffolk</p> <p>11 County Department of Civil Service."</p> <p>12 Is that a psychological evaluation 11:14:23AM</p> <p>13 different in any respect from the psychological</p> <p>14 evaluation that applies in CD 2 to police</p> <p>15 officers?</p> <p>16 A No, it is not. 11:14:33AM</p> <p>17 Q And what about in Number 5, the 11:14:35AM</p> <p>18 qualifying medical valuation for part-time</p> <p>19 seasonal, is that any different than the</p> <p>20 qualifying medical for full-time?</p> <p>21 A No. 11:14:44AM</p> <p>22 Q What about the qualifying physical 11:14:46AM</p> <p>23 fitness evaluation for part-time seasonal, is</p> <p>24 that any different than the qualifying physical</p> <p>25 fitness evaluation for full-time?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 78	Page 79
<p>1 CYNTHIA DISTEFANO</p> <p>2 A There's no age limit on part-time 11:14:56AM</p> <p>3 police officers. There is for full-time. So</p> <p>4 the standards do make age adjustments for what's</p> <p>5 expected.</p> <p>6 Q Other than age, is there another -- 11:15:07AM</p> <p>7 A No. 11:15:09AM</p> <p>8 Q And Number 9. This is on CD 3. 11:15:12AM</p> <p>9 "Candidates must successfully pass a polygraph</p> <p>10 evaluation." Is that polygraph evaluation</p> <p>11 requirement any different than in the case of</p> <p>12 full-time police officers?</p> <p>13 A No. 11:15:22AM</p> <p>14 Q Is there such a thing as an agility 11:15:28AM</p> <p>15 evaluation that is a requirement for Suffolk</p> <p>16 County Civil Service with respect to any law</p> <p>17 enforcement, public safety or police officer</p> <p>18 position?</p> <p>19 A For police officers, there's a 11:15:43AM</p> <p>20 physical agility, physical fitness agility.</p> <p>21 Q Does that apply only to full-time 11:15:48AM</p> <p>22 police officers?</p> <p>23 A No. 11:15:51AM</p> <p>24 Q Is that a requirement also for 11:15:51AM</p> <p>25 part-time/seasonal police officers?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 A It is. 11:15:54AM</p> <p>3 Q I may be overlooking it. Is that 11:15:56AM</p> <p>4 something's that's listed on this?</p> <p>5 A It's Number 6. 11:16:02AM</p> <p>6 Q That's part of the physical fitness 11:16:03AM</p> <p>7 evaluation?</p> <p>8 A Agility, physical fitness are 11:16:06AM</p> <p>9 synonymous.</p> <p>10 Q Okay. Turning to the second page of 11:16:14AM</p> <p>11 CD 3. My questions here are going to be -- it</p> <p>12 would probably be more convenient if you just</p> <p>13 read through the text of this page and let me</p> <p>14 know when you're done.</p> <p>15 A (Witness complies.) Okay. 11:16:40AM</p> <p>16 Q And the heading "Limitations on 11:16:48AM</p> <p>17 Part-Time Employment." Number 1, "Part-time</p> <p>18 officers may be used under the following</p> <p>19 conditions only and only as underlined. A, When</p> <p>20 the full-time complement of police officers is</p> <p>21 depleted due to court appearances, medical</p> <p>22 absences or vacation."</p> <p>23 Ms. DiStefano -- let me just read the 11:17:08AM</p> <p>24 second one and then ask.</p> <p>25 MR. NOVIKOFF: The document says what 11:17:23AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 80	Page 81
<p>1 CYNTHIA DISTEFANO</p> <p>2 it says.</p> <p>3 MR. GRAFF: It will be more clear to 11:17:26AM</p> <p>4 follow in the transcript.</p> <p>5 BY MR. GRAFF: 11:17:28AM</p> <p>6 Q "In emergency conditions, when the 11:17:29AM</p> <p>7 full-time complement of police officers is</p> <p>8 insufficient to ensure adequate protection of</p> <p>9 life and property."</p> <p>10 Ms. DiStefano, are these limitations 11:17:39AM</p> <p>11 on part-time employment of police officers</p> <p>12 applicable to the part-time employment of police</p> <p>13 officers in the Incorporated Village of Ocean</p> <p>14 Beach?</p> <p>15 A Yes. 11:17:50AM</p> <p>16 MR. NOVIKOFF: Objection. 11:17:51AM</p> <p>17 BY MR. GRAFF: 11:17:51AM</p> <p>18 Q And has that been the case from 2000 11:17:52AM</p> <p>19 to the present?</p> <p>20 A Yes. 11:17:57AM</p> <p>21 MR. NOVIKOFF: Objection. 11:17:58AM</p> <p>22 BY MR. GRAFF: 11:17:58AM</p> <p>23 Q Was that the case, if you know, from 11:17:59AM</p> <p>24 1990 to 2000?</p> <p>25 A Yes. 11:18:02AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 Q Who determines whether the full-time 11:18:04AM</p> <p>3 complement of police officers has been depleted</p> <p>4 as set forth in Subheading A?</p> <p>5 A The police chief or whoever is in 11:18:16AM</p> <p>6 charge of the police department.</p> <p>7 Q And is that something that needs to be 11:18:20AM</p> <p>8 reported to Civil Service?</p> <p>9 A We certify police payroll, and 11:18:26AM</p> <p>10 sometimes they report that. We don't</p> <p>11 micromanage police departments. If they deem it</p> <p>12 an emergency, we accept that.</p> <p>13 Q And other than that presenting for 11:18:38AM</p> <p>14 certification the payroll that lists the</p> <p>15 position of part time police officer, is there</p> <p>16 any other documentation as to the basis on which</p> <p>17 that part-time officer was hired that needs to</p> <p>18 be provided to that Civil Service Department?</p> <p>19 MS. ZWILLING: Are you asking about 11:18:56AM</p> <p>20 Civil Service documentation? Because the</p> <p>21 PDs may have their own documentation.</p> <p>22 MR. GRAFF: I'm asking about Civil 11:19:02AM</p> <p>23 Service documentation.</p> <p>24 BY MR. GRAFF: 11:19:04AM</p> <p>25 Q Other than stating they have employed 11:19:04AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 82</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 a part-time police officer, do they need to</p> <p>3 report anything else with respect to the matters</p> <p>4 set forth in Number 1 here?</p> <p>5 A They're asked to explain which of the 11:19:19AM</p> <p>6 part-time restrictions that officer is employed</p> <p>7 under, whether it's that he won't earn over a</p> <p>8 stipulated amount of money or whether he will</p> <p>9 not work over half the normal work week.</p> <p>10 Q And how is that inquiry communicated 11:19:39AM</p> <p>11 to -- how is that question posed to the</p> <p>12 municipality? Is it an oral question?</p> <p>13 A It's on the report of personnel 11:19:50AM</p> <p>14 changes, the Civil Service 150 that they use to</p> <p>15 report any personnel changes.</p> <p>16 Q And is it a requirement that on that 11:20:01AM</p> <p>17 form they indicate the basis for the part-time</p> <p>18 employment as set forth in Number 1 or Number 2</p> <p>19 here?</p> <p>20 MR. NOVIKOFF: Objection to form. 11:20:11AM</p> <p>21 A We ask -- there's a column to address 11:20:13AM</p> <p>22 that. It's addressed on payroll if it's not</p> <p>23 there.</p> <p>24 Q In part 1B, when it refers to 11:20:25AM</p> <p>25 emergency conditions, when the complement of</p> <p style="text-align: center;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 83</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 police officers is depleted, is there any</p> <p>3 direction or specification from Civil Service</p> <p>4 with respect to the duration of an emergency</p> <p>5 condition within the meaning of this Section 2B?</p> <p>6 A We leave that up to the police 11:20:45AM</p> <p>7 department, but the part-time limitations would</p> <p>8 apply in the people they use to address it.</p> <p>9 Q And the part-time limitations that 11:20:55AM</p> <p>10 you're referring to, is that what's Number 2?</p> <p>11 A Yes. 11:21:00AM</p> <p>12 Q So even in emergency conditions, when 11:21:04AM</p> <p>13 a part-time officer is hired on that basis, they</p> <p>14 still need to comply with Number 2?</p> <p>15 A Yes. 11:21:11AM</p> <p>16 Q When it refers to the Suffolk County 11:21:12AM</p> <p>17 Department of Civil Service rules, Rule 2 and --</p> <p>18 Rule 2, the pound sign 14, is that referring to</p> <p>19 two different rules, Rule 2 and Rule 14?</p> <p>20 A No, it's Rule 2 Number 14. 11:21:28AM</p> <p>21 Q Do you know -- without consulting the 11:21:32AM</p> <p>22 document, do you know what that rule is?</p> <p>23 A Yes, it's the definition of part-time. 11:21:35AM</p> <p>24 Q And what is that definition? 11:21:37AM</p> <p>25 A That the employment will not exceed 11:21:40AM</p> <p style="text-align: center;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 84</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 50 percent of the normal work week or that it</p> <p>3 will -- the person will not earn over a certain</p> <p>4 amount of money.</p> <p>5 Q And is it -- in the actual rule 11:21:57AM</p> <p>6 itself, is the amount of money specified?</p> <p>7 A It's \$5,000 or 25 percent of the 11:22:02AM</p> <p>8 entry-level salary for whatever that title is.</p> <p>9 Q And is that 25 percent of the annual 11:22:08AM</p> <p>10 salary?</p> <p>11 A Yes. 11:22:11AM</p> <p>12 Q And how is normal week defined for 11:22:22AM</p> <p>13 purposes of measuring 50 percent of a normal</p> <p>14 week?</p> <p>15 MR. NOVIKOFF: Objection to form. 11:22:29AM</p> <p>16 A We contact whatever the jurisdiction 11:22:33AM</p> <p>17 is and ask them whether it's 35, 37 and a half,</p> <p>18 40.</p> <p>19 Q And is there -- could it be more than 11:22:39AM</p> <p>20 40?</p> <p>21 A No. 11:22:42AM</p> <p>22 Q Would it be permissible under Civil 11:23:00AM</p> <p>23 Service regulation for a part-time officer to</p> <p>24 work 40 hours a week in the first week of the</p> <p>25 month, zero hours in weeks two, three and four,</p> <p style="text-align: center;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 85</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 such that their total month's employment is less</p> <p>3 than 50 percent of the normal month's</p> <p>4 employment?</p> <p>5 MS. ZWILLING: Objection. 11:23:20AM</p> <p>6 MR. NOVIKOFF: Objection to form. 11:23:21AM</p> <p>7 MS. ZWILLING: Your question -- I 11:23:22AM</p> <p>8 mean, there's all kinds of variables that</p> <p>9 I'm not sure you intend to factor in there.</p> <p>10 What if someone's sick? What if they're on</p> <p>11 vacation? Under those circumstances, they</p> <p>12 would be working zero hours. So I'm not</p> <p>13 sure that that's what you're talking about.</p> <p>14 MR. GRAFF: I'm not asking about 11:23:34AM</p> <p>15 vacation time or sick time. That would be</p> <p>16 part of the normal work year, week or month</p> <p>17 of a full-time police officer.</p> <p>18 BY MR. GRAFF: 11:23:46AM</p> <p>19 Q I'm asking in a normal month, can they 11:23:46AM</p> <p>20 schedule themselves for full-time hours one</p> <p>21 week, no hours the rest of the month and still</p> <p>22 comply with the standard?</p> <p>23 MS. ZWILLING: Objection. What do you 11:23:57AM</p> <p>24 mean, schedule themselves?</p> <p>25 MR. GRAFF: Can they work on the 11:24:00AM</p> <p style="text-align: center;">TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 86</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 clock.</p> <p>3 MR. NOVIKOFF: As opposed to off the 11:24:02AM</p> <p>4 clock?</p> <p>5 A If they work in the circumstances that 11:24:04AM</p> <p>6 you described, then they would be employable</p> <p>7 under the money limit rather than the time</p> <p>8 limit.</p> <p>9 Q And what if they did that 10 days a 11:24:14AM</p> <p>10 month, 12 months a year?</p> <p>11 MS. ZWILLING: Objection. I'm not 11:24:20AM</p> <p>12 sure there's a question there.</p> <p>13 MR. NOVIKOFF: Objection. 11:24:22AM</p> <p>14 BY MR. GRAFF: 11:24:24AM</p> <p>15 Q What if they worked one week a month 11:24:24AM</p> <p>16 full hours for each month of the year?</p> <p>17 MR. NOVIKOFF: Objection. 11:24:33AM</p> <p>18 MS. ZWILLING: Are you asking if 11:24:34AM</p> <p>19 that's permissible?</p> <p>20 MR. GRAFF: Yes. 11:24:36AM</p> <p>21 A If they did not earn over \$5,000 or 11:24:37AM</p> <p>22 25 percent of the entry level salary, that would</p> <p>23 be fine.</p> <p>24 Q Is the entry-level salary for 11:24:42AM</p> <p>25 municipalities in Suffolk County set by Suffolk</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 87</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 County Civil Service?</p> <p>3 A It is set by the jurisdiction. Each 11:24:50AM</p> <p>4 jurisdiction sets its own.</p> <p>5 Q Are there any guidelines at all as far 11:24:54AM</p> <p>6 as the range that a jurisdiction can set?</p> <p>7 MS. ZWILLING: Civil Service 11:24:59AM</p> <p>8 guidelines?</p> <p>9 A Not Civil Service guidelines, no. 11:25:02AM</p> <p>10 Q Are there any guidelines, Civil 11:25:29AM</p> <p>11 Service guidelines, with respect to the relative</p> <p>12 starting salary of different police officer</p> <p>13 positions? If that question makes sense as I</p> <p>14 posed it.</p> <p>15 A Civil Service does not set salaries. 11:25:42AM</p> <p>16 Each jurisdiction sets its own.</p> <p>17 Q Would it be permissible for a 11:25:47AM</p> <p>18 subordinate police officer level position to be</p> <p>19 earning more than that individual's supervisor</p> <p>20 as far as Civil Service guidelines?</p> <p>21 MS. ZWILLING: Objection. If you want 11:26:00AM</p> <p>22 to ask her if that is or is not in</p> <p>23 compliance with Civil Service guidelines,</p> <p>24 fine.</p> <p>25 MR. GRAFF: That's what I'm asking. 11:26:05AM</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 88</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: But whether or not it's 11:26:06AM</p> <p>3 appropriate is --</p> <p>4 MR. GRAFF: I said permissible, and I 11:26:10AM</p> <p>5 specifically mean with respect to Civil</p> <p>6 Service guidelines.</p> <p>7 MS. ZWILLING: I'm going to object to 11:26:14AM</p> <p>8 that, because she said there's no Civil</p> <p>9 Service guidelines.</p> <p>10 BY MR. GRAFF: 11:26:16AM</p> <p>11 Q Is there a guideline that would apply 11:26:17AM</p> <p>12 to the situation that I described?</p> <p>13 A There are instances in the county 11:26:22AM</p> <p>14 salary plan, which has 12 steps, where a</p> <p>15 supervisor is earning less because he's newer</p> <p>16 than a subordinate who's been there a long time.</p> <p>17 So it's possible.</p> <p>18 Q What about law enforcement public 11:26:37AM</p> <p>19 safety, are there any positions in those</p> <p>20 categories where there would be a guideline that</p> <p>21 would prohibit a subordinate from earning more</p> <p>22 than a superior?</p> <p>23 MS. ZWILLING: A Civil Service 11:26:52AM</p> <p>24 guideline? Because different jurisdictions,</p> <p>25 different municipalities will have different</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 89</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 internal guidelines. I think what the</p> <p>3 witness is saying is Civil Service has no</p> <p>4 involvement in setting salaries.</p> <p>5 MR. GRAFF: I just want to make sure 11:27:06AM</p> <p>6 that Ms. DiStefano was referring to any</p> <p>7 position, including law enforcement</p> <p>8 positions.</p> <p>9 MS. ZWILLING: But it has to be 11:27:09AM</p> <p>10 related to Civil Service restrictions.</p> <p>11 MR. GRAFF: Yes, I understand. I 11:27:12AM</p> <p>12 intend all of these questions to be on Civil</p> <p>13 Service restrictions.</p> <p>14 A There are no Civil Service 11:27:18AM</p> <p>15 restrictions. If we see a salary that looks to</p> <p>16 be an aberration, we may question whether that</p> <p>17 is appropriately classified.</p> <p>18 MR. GRAFF: Off the record. 11:27:43AM</p> <p>19 (Whereupon, a discussion was held off 11:27:43AM</p> <p>20 the record.)</p> <p>21 BY MR. GRAFF: 11:33:23AM</p> <p>22 Q Ms. DiStefano, on either CD 2 or CD 3, 11:33:37AM</p> <p>23 are the items under necessary special</p> <p>24 requirements, are there ever exceptions</p> <p>25 authorized by the Civil Service Department with</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 90</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 respect to necessary special services?</p> <p>3 MR. NOVIKOFF: Ever in the history of 11:33:53AM</p> <p>4 the Civil Service Department? Is that the</p> <p>5 question?</p> <p>6 BY MR. GRAFF: 11:33:56AM</p> <p>7 Q From 2000 to the present? 11:33:57AM</p> <p>8 A I'm not aware of any. 11:33:59AM</p> <p>9 Q And is the same true for minimum 11:34:00AM</p> <p>10 qualifications?</p> <p>11 MR. NOVIKOFF: Note my objection. 11:34:04AM</p> <p>12 A Yes. 11:34:05AM</p> <p>13 Q On CD 2 -- and this is going to be, I 11:34:20AM</p> <p>14 know, very basic material -- at the very bottom</p> <p>15 of the page it says "competitive." What does</p> <p>16 that mean in this context?</p> <p>17 A It means it's in the competitive 11:34:32AM</p> <p>18 class.</p> <p>19 Q And could you describe what the 11:34:36AM</p> <p>20 competitive class means in the context that you</p> <p>21 use it?</p> <p>22 A That's subject to merit and fitness 11:34:42AM</p> <p>23 through a competitive examination process.</p> <p>24 Q And is that also the request for 11:34:46AM</p> <p>25 eligibles and eligible list and canvass letter,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 91</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 is that all characteristic of a competitive</p> <p>3 class?</p> <p>4 A Yes, it is. 11:34:57AM</p> <p>5 Q And non-competitive, could you explain 11:34:58AM</p> <p>6 what that means?</p> <p>7 A Non-competitive is subject to meeting 11:35:05AM</p> <p>8 certain minimum qualifications, but there is no</p> <p>9 written examination. There's no ranking system.</p> <p>10 Q With respect to the ranking system on 11:35:21AM</p> <p>11 eligible lists, is it the case that the person</p> <p>12 hired off an eligible list needs to be -- needs</p> <p>13 to attain one of the top three scores on that</p> <p>14 list?</p> <p>15 MR. NOVIKOFF: Objection to form. 11:35:40AM</p> <p>16 A He must be among the top three willing 11:35:41AM</p> <p>17 acceptors on the list.</p> <p>18 Q What if there are -- what if a 11:35:48AM</p> <p>19 municipality is looking to hire more than one</p> <p>20 individual for the same position? What effect</p> <p>21 would that have on the requirement you just</p> <p>22 referred to?</p> <p>23 A As you hire one, that might make 11:36:01AM</p> <p>24 reachability more widespread lower down on the</p> <p>25 list. That's the only difference.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 92</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q So it would be the same list, one of 11:36:09AM</p> <p>3 the top three?</p> <p>4 A Yes. 11:36:19AM</p> <p>5 Q So if it they were going to hire two 11:36:21AM</p> <p>6 positions, then the second hire would be one of</p> <p>7 the top four on the original list?</p> <p>8 A No -- it could be. It could be. 11:36:30AM</p> <p>9 There are tie scores sometimes, where the top</p> <p>10 has 10, 15 names in.</p> <p>11 Q Is it the case that a municipality can 11:36:46AM</p> <p>12 request an eligible list that has a</p> <p>13 jurisdictional limitation beyond just Suffolk</p> <p>14 County?</p> <p>15 MS. ZWILLING: Are you asking about 11:36:56AM</p> <p>16 residency requirements?</p> <p>17 MR. GRAFF: Yes. 11:36:59AM</p> <p>18 MS. ZWILLING: Could you just rephrase 11:36:59AM</p> <p>19 the question.</p> <p>20 BY MR. GRAFF: 11:37:02AM</p> <p>21 Q Do you understand what residency 11:37:02AM</p> <p>22 requirement is?</p> <p>23 A Yes. 11:37:06AM</p> <p>24 MS. ZWILLING: What is your question 11:37:06AM</p> <p>25 about residency requirements?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 93</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MR. GRAFF: I don't mean to be going 11:37:06AM</p> <p>3 that way. I just want to be sure the</p> <p>4 witness knows the context I'm going in for</p> <p>5 the next question.</p> <p>6 MS. ZWILLING: Okay. So you're 11:37:06AM</p> <p>7 withdrawing that question and you have a new</p> <p>8 question?</p> <p>9 MR. GRAFF: Yes. 11:37:06AM</p> <p>10 MS. ZWILLING: Okay. 11:37:06AM</p> <p>11 BY MR. GRAFF: 11:37:06AM</p> <p>12 Q On an eligible list that is not county 11:37:18AM</p> <p>13 wide but that factors in residency requirements,</p> <p>14 if that eligible list produces only one willing</p> <p>15 qualified person and the municipality is looking</p> <p>16 to hire more than one for the position, how can</p> <p>17 they hire a second person? Let me rephrase that</p> <p>18 question.</p> <p>19 Are they then automatically required 11:37:44AM</p> <p>20 to use the county-wide eligible list or is there</p> <p>21 another way that they can hire a second person?</p> <p>22 MR. NOVIKOFF: Wait a second. You 11:37:53AM</p> <p>23 asked one question. Then you said let me</p> <p>24 rephrase that question, and then you said</p> <p>25 "are they then."</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 94</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MR. GRAFF: I don't want the question 11:38:01AM</p> <p>3 to be confusing.</p> <p>4 BY MR. GRAFF: 11:38:03AM</p> <p>5 Q If a jurisdictionally or a 11:38:04AM</p> <p>6 geographically limited list is created and it</p> <p>7 has, for example, one name on it, that person is</p> <p>8 hired but the municipality wants to hire a</p> <p>9 second person, is the municipality required to</p> <p>10 hire that second person off of the county-wide</p> <p>11 eligible list?</p> <p>12 A Yes. 11:38:24AM</p> <p>13 Q Are there any exceptions to that? 11:38:25AM</p> <p>14 A No. 11:38:26AM</p> <p>15 Q Are there any Civil Service classified 11:38:32AM</p> <p>16 positions in the Incorporated Village of Ocean</p> <p>17 Beach for which employees need to be hired in</p> <p>18 the first instance off a county-wide list?</p> <p>19 MS. ZWILLING: Objection. 11:38:47AM</p> <p>20 MR. NOVIKOFF: I'm going to object. 11:38:48AM</p> <p>21 Are you referring just to police 11:38:48AM</p> <p>22 officer or anybody?</p> <p>23 MR. GRAFF: I'm asking about any Civil 11:38:53AM</p> <p>24 Service positions in Ocean Beach where Ocean</p> <p>25 Beach can't request a geographically or</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 95</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 jurisdictionally limited list.</p> <p>3 MS. ZWILLING: The residency 11:39:04AM</p> <p>4 requirements are not Civil Service</p> <p>5 requirements. They're imposed by the</p> <p>6 municipality.</p> <p>7 MR. GRAFF: Right. 11:39:08AM</p> <p>8 MS. ZWILLING: So it's their choice 11:39:09AM</p> <p>9 whether to ask for a residency restricted --</p> <p>10 MR. GRAFF: The question I'm asking is 11:39:13AM</p> <p>11 are there any positions with respect to</p> <p>12 which they cannot choose to use a residency</p> <p>13 requirement limited list.</p> <p>14 MR. NOVIKOFF: Objection. You're 11:39:24AM</p> <p>15 going to a place clearly where you're</p> <p>16 suggesting that George Hesse was a not a</p> <p>17 resident and therefore it must have been in</p> <p>18 violation of some type of law, Civil Service</p> <p>19 rule that he was hired by Ocean Beach. I</p> <p>20 get it. What relevancy does that have to</p> <p>21 this lawsuit, Mr. Hesse's residence? I</p> <p>22 think at this point we need some type of</p> <p>23 proffer, because there is not one allegation</p> <p>24 in your complaint that deals with residency</p> <p>25 as a basis for the decision not to rehire</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 96</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 and/or terminate, however you want to call</p> <p>3 it, the plaintiffs.</p> <p>4 MR. GRAFF: Mr. Novikoff, I don't need 11:40:05AM</p> <p>5 to defend the relevancy of the question. If</p> <p>6 any party here would like to seek a</p> <p>7 protective order on that ground, fine, but I</p> <p>8 will not explain the relevancy of that of</p> <p>9 that question.</p> <p>10 And I'd also ask you, especially if 11:40:15AM</p> <p>11 you're going to be speaking on the record,</p> <p>12 to perhaps return to your seat.</p> <p>13 MR. NOVIKOFF: Why do I need to be 11:40:22AM</p> <p>14 sitting down in order to speak when there's</p> <p>15 a court reporter here taking every word that</p> <p>16 I say down? There's no videotape here.</p> <p>17 MR. GRAFF: The court reporter has 11:40:33AM</p> <p>18 noted for the record that I object to your</p> <p>19 standing and speaking.</p> <p>20 MR. NOVIKOFF: You object to my 11:40:38AM</p> <p>21 standing and speaking? Actually, I'm</p> <p>22 sitting on a windowsill, because I have a</p> <p>23 bad back and sitting on these soft chairs</p> <p>24 really gives me a lot of pain. In fact,</p> <p>25 it's really hurting me right now.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 97</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MR. GRAFF: I will note that the 11:40:52AM</p> <p>3 relevancy of that is unconnected to this</p> <p>4 deposition. But if you're indicating you're</p> <p>5 in pain sitting, then I withdraw the</p> <p>6 objection.</p> <p>7 BY MR. GRAFF: 11:41:27AM</p> <p>8 Q Are there any Civil Service classified 11:41:28AM</p> <p>9 positions in Ocean Beach for which Ocean Beach</p> <p>10 cannot request a residency limited eligible</p> <p>11 list?</p> <p>12 A A jurisdiction may always request a 11:41:38AM</p> <p>13 residency list.</p> <p>14 MR. CONNOLLY: That was "may"? 11:41:48AM</p> <p>15 THE WITNESS: May. 11:41:50AM</p> <p>16 MR. GRAFF: If I could ask the court 11:42:03AM</p> <p>17 reporter to mark as CD 4 a one-page document</p> <p>18 produced by the county without Bates</p> <p>19 numbers, headed "Sergeant (police towns and</p> <p>20 villages)."</p> <p>21 (Whereupon, a document Headed sergeant 11:42:24AM</p> <p>22 (police towns and villages) was marked as</p> <p>23 DiStefano Exhibit 4 for identification, as</p> <p>24 of this date.)</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 98	Page 99
<p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 11:42:50AM</p> <p>3 Q Again, Ms. DiStefano, if you can take 11:42:51AM</p> <p>4 a moment to look at the document and tell me if</p> <p>5 you've seen it before.</p> <p>6 A I have. 11:42:57AM</p> <p>7 Q Can you identify it? 11:42:58AM</p> <p>8 A It's our job specification for 11:42:59AM</p> <p>9 sergeant, police, towns and villages.</p> <p>10 Q And are there any other specifications 11:43:04AM</p> <p>11 for sergeant positions within police, towns and</p> <p>12 villages other than this one?</p> <p>13 MR. NOVIKOFF: Objection. 11:43:15AM</p> <p>14 MS. ZWILLING: You're talking about 11:43:16AM</p> <p>15 Civil Service specifications.</p> <p>16 MR. GRAFF: Yes. Yes. 11:43:16AM</p> <p>17 A Not for towns and villages, no. 11:43:18AM</p> <p>18 Q I note the date on this document is at 11:43:20AM</p> <p>19 the bottom, 7-18-94. Do you know whether this</p> <p>20 is the current specifications?</p> <p>21 A I would have to check. I think it is. 11:43:30AM</p> <p>22 Q And minimum qualifications here has an 11:43:37AM</p> <p>23 underlined subheading "promotional." Could you</p> <p>24 explain what "promotional" means in this</p> <p>25 context?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 A It's only open to people who have 11:43:44AM</p> <p>3 three years of permanent competitive status as a</p> <p>4 police officer.</p> <p>5 Q And is that as a police officer with 11:43:49AM</p> <p>6 competitive status in Suffolk County?</p> <p>7 A In whatever the town and village is. 11:43:53AM</p> <p>8 A promotional list is only applicable in one</p> <p>9 particular jurisdiction.</p> <p>10 Q And that's a municipal jurisdiction, 11:44:03AM</p> <p>11 not the jurisdiction of the county?</p> <p>12 A That's correct. Everybody takes the 11:44:08AM</p> <p>13 same test, but the list resulting is only for a</p> <p>14 particular jurisdiction. So the Town of</p> <p>15 Southold police officers would take this, but</p> <p>16 they would only be certified to the Town of</p> <p>17 Southold.</p> <p>18 Q And is there any Civil Service 11:44:24AM</p> <p>19 specification or rule that would bear on the</p> <p>20 question of whether a municipality can extend</p> <p>21 the title sergeant to a police officer or other</p> <p>22 person who has not satisfied this specification?</p> <p>23 MR. NOVIKOFF: Objection to form. 11:44:47AM</p> <p>24 BY MR. GRAFF: 11:44:52AM</p> <p>25 Q Did you follow the question? 11:44:52AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 100	Page 101
<p>1 CYNTHIA DISTEFANO</p> <p>2 A No. 11:44:53AM</p> <p>3 Q Could somebody -- could the village 11:44:55AM</p> <p>4 employ somebody with the title sergeant who has</p> <p>5 not satisfied the standards on CD 4?</p> <p>6 MR. NOVIKOFF: Could they employ 11:45:11AM</p> <p>7 someone or would the employment of that</p> <p>8 person be in violation of some Civil Service</p> <p>9 regulation?</p> <p>10 MR. GRAFF: Yes. 11:45:17AM</p> <p>11 BY MR. GRAFF: 11:45:17AM</p> <p>12 Q Could they employ consistent with 11:45:18AM</p> <p>13 Civil Service regulation?</p> <p>14 MR. NOVIKOFF: Note my objection to 11:45:22AM</p> <p>15 the form, but it's getting close to a proper</p> <p>16 question.</p> <p>17 A Anyone employed as a sergeant must be 11:45:26AM</p> <p>18 appointed to a sergeant's eligible list.</p> <p>19 Q And I'm not trying to nitpick over the 11:45:34AM</p> <p>20 words. But employed as a sergeant, is that</p> <p>21 based on the title of their position or on the</p> <p>22 duties of their position, if that distinction</p> <p>23 makes sense?</p> <p>24 MS. ZWILLING: Whose title? 11:45:48AM</p> <p>25 MR. NOVIKOFF: Objection to form. 11:45:49AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: Are you talking about 11:45:51AM</p> <p>3 what their Civil Service title is or what</p> <p>4 their department or the people they work</p> <p>5 with may be calling them?</p> <p>6 MR. NOVIKOFF: Or what they told 11:45:58AM</p> <p>7 themselves out to be to the world.</p> <p>8 MR. GRAFF: Right. 11:46:03AM</p> <p>9 BY MR. GRAFF: 11:46:05AM</p> <p>10 Q Can their own department refer to them 11:46:06AM</p> <p>11 by the title sergeant if they have not been</p> <p>12 hired in accordance with this specification?</p> <p>13 MS. ZWILLING: I'm going to object to 11:46:16AM</p> <p>14 that. If you want to ask if it's consistent</p> <p>15 with --</p> <p>16 MR. GRAFF: Yes. If it is consistent 11:46:19AM</p> <p>17 with Civil Service regulations.</p> <p>18 A No. 11:46:22AM</p> <p>19 MR. NOVIKOFF: Their own department, 11:46:22AM</p> <p>20 what does that mean?</p> <p>21 BY MR. GRAFF: 11:46:22AM</p> <p>22 Q Is it a violation of Civil Service 11:46:24AM</p> <p>23 regulation?</p> <p>24 MR. NOVIKOFF: Objection to the form. 11:46:26AM</p> <p>25 I don't even know if that's a question.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 102</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: Objection. 11:46:28AM</p> <p>3 BY MR. GRAFF: 11:46:30AM</p> <p>4 Q Would it violate any Civil Service 11:46:31AM</p> <p>5 regulation for a municipality, police department</p> <p>6 in a municipality to refer to an employee by the</p> <p>7 title of sergeant if that employee was not hired</p> <p>8 in accordance with the specification?</p> <p>9 MR. NOVIKOFF: Objection to form. 11:46:45AM</p> <p>10 MS. ZWILLING: Objection. 11:46:46AM</p> <p>11 If you can answer it. 11:46:46AM</p> <p>12 Obviously, Arie, there may be 11:46:53AM</p> <p>13 problems, but they may not be problems with</p> <p>14 respect to Civil Service.</p> <p>15 MR. GRAFF: That's my question. 11:46:58AM</p> <p>16 A If the person were reported to us as a 11:46:59AM</p> <p>17 sergeant and not appointed from a sergeant list,</p> <p>18 that would not be an approved appointment. If</p> <p>19 we're aware that someone is functioning in that</p> <p>20 capacity and is not legally appointed in the</p> <p>21 title, we would pursue that with whatever the</p> <p>22 employing jurisdiction was to get the</p> <p>23 appointment in conformance -- the employment in</p> <p>24 conformance.</p> <p>25 MR. NOVIKOFF: Arie, isn't it almost 11:47:31AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 103</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 not disputed that Mr. Hesse was in some</p> <p>3 degree acting out of title, given the fact</p> <p>4 that Civil Service, according to the</p> <p>5 documentation you've produced at</p> <p>6 depositions, put the beach on notice as to</p> <p>7 that very existence?</p> <p>8 MS. ZWILLING: Certainly the county's 11:47:49AM</p> <p>9 not going to disagree with that.</p> <p>10 MR. GRAFF: I'm really happy to talk 11:47:56AM</p> <p>11 to you about these issues as much as you</p> <p>12 want, but not as part of this deposition.</p> <p>13 MR. NOVIKOFF: It just seems like 11:48:02AM</p> <p>14 you're asking this witness to answer</p> <p>15 questions that you've already established</p> <p>16 through documentation and in prior</p> <p>17 depositions.</p> <p>18 MR. GRAFF: If I could ask the 11:48:13AM</p> <p>19 reporter to please mark as CD 5 a four-page</p> <p>20 document. This is from the county's</p> <p>21 website.</p> <p>22 (Whereupon, a four-page document was 11:48:25AM</p> <p>23 marked as DiStefano Exhibit 5 for</p> <p>24 identification, as of this date.)</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 104</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 11:49:08AM</p> <p>3 Q My first question, do you recognize 11:49:09AM</p> <p>4 the document?</p> <p>5 A I do. 11:49:11AM</p> <p>6 Q And is it correctly assembled as a 11:49:12AM</p> <p>7 four-page document here?</p> <p>8 A Yes. 11:49:17AM</p> <p>9 Q That is, is it four pages? 11:49:17AM</p> <p>10 A Yes. 11:49:19AM</p> <p>11 Q Could you identify the document, 11:49:23AM</p> <p>12 please?</p> <p>13 A It's a Civil Service application. 11:49:26AM</p> <p>14 Q Is this the application for any Civil 11:49:27AM</p> <p>15 Service prospect position?</p> <p>16 A No, it's for open competitive and 11:49:37AM</p> <p>17 non-competitive appointments.</p> <p>18 Q And what other Civil Service 11:49:41AM</p> <p>19 classified positions are there?</p> <p>20 A Exempt, labor. 11:49:47AM</p> <p>21 Q And do those have their own 11:49:48AM</p> <p>22 application forms?</p> <p>23 A They do not require applications. 11:49:51AM</p> <p>24 Q There's obviously a lot on the form. 11:49:57AM</p> <p>25 I had a question, though, on Number 5. It's a</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 105</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 little subheading or capitalized, Legal</p> <p>3 Residents Codes. Then it says, "Identify each</p> <p>4 of the districts of which you are a legal</p> <p>5 resident."</p> <p>6 My question here, are there any Civil 11:50:14AM</p> <p>7 Service specifications or guidelines that bear</p> <p>8 on what a legal resident is in this context?</p> <p>9 A There's no definition in the Civil 11:50:28AM</p> <p>10 Service law or rules as to legal resident.</p> <p>11 Q And do you know what definition 11:50:34AM</p> <p>12 applies? If not a Civil Service definition, is</p> <p>13 it a municipal definition?</p> <p>14 A It's where you lay your head at night. 11:50:46AM</p> <p>15 Q And what are you basing that on? 11:50:49AM</p> <p>16 A Experience in the department as to 11:50:54AM</p> <p>17 what that means.</p> <p>18 Q Okay. If I were to stay at a hotel in 11:50:58AM</p> <p>19 one jurisdiction for the night, would that</p> <p>20 establish my legal residence in the context that</p> <p>21 it's used here?</p> <p>22 A Sure. 11:51:12AM</p> <p>23 MR. NOVIKOFF: Objection. 11:51:13AM</p> <p>24 A It's where you live. 11:51:14AM</p> <p>25 Q What if a person has multiple places 11:51:17AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 106</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 where they live on a rotating basis, can a</p> <p>3 person --</p> <p>4 MS. ZWILLING: The document seems to 11:51:23AM</p> <p>5 allow for that. It says identify each of</p> <p>6 the districts.</p> <p>7 MR. NOVIKOFF: You're asking this 11:51:29AM</p> <p>8 witness to opine on what the law is with</p> <p>9 regard to how one establishes residencies?</p> <p>10 MR. GRAFF: No. I'm asking if there's 11:51:36AM</p> <p>11 any Civil Service standard or specification</p> <p>12 that bears on the question I just asked,</p> <p>13 namely whether a person can have multiple</p> <p>14 legal residences. As you point out, the</p> <p>15 document suggests that the answer is yes.</p> <p>16 MR. NOVIKOFF: That would've been an 11:51:48AM</p> <p>17 appropriate question instead of giving</p> <p>18 hypotheticals.</p> <p>19 A The legal residence codes referred to 11:51:53AM</p> <p>20 in Number 5 all refer to the same place. It's</p> <p>21 just subdivided, county, town, school district,</p> <p>22 village, library district. That doesn't mean</p> <p>23 they are all different places. It's all</p> <p>24 different categories assigned to wherever they</p> <p>25 normally live.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 107</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q And is there any Civil Service 11:52:13AM</p> <p>3 specification or guideline that bears on the</p> <p>4 question whether an individual can have more</p> <p>5 than one legal residence in this context?</p> <p>6 A One has to be a legal residence. If 11:52:23AM</p> <p>7 that becomes an issue, then we have to explore</p> <p>8 which one that is.</p> <p>9 MR. GRAFF: Could you just read that 11:52:36AM</p> <p>10 back.</p> <p>11 (Whereupon, the requested portion was 11:52:46AM</p> <p>12 read back by the court reporter: A, One has</p> <p>13 to be a legal residence. If that becomes an</p> <p>14 issue, then we have to explore which one</p> <p>15 that is.)</p> <p>16 BY MR. GRAFF: 11:52:47AM</p> <p>17 Q And do you mean only one location has 11:52:47AM</p> <p>18 a legal residence?</p> <p>19 A Yes. 11:52:51AM</p> <p>20 Q And how would you go about exploring 11:52:53AM</p> <p>21 that?</p> <p>22 MR. NOVIKOFF: The witness or the 11:52:58AM</p> <p>23 Civil Service Department?</p> <p>24 MR. GRAFF: The Civil Service 11:52:59AM</p> <p>25 Department.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 108</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A We have contacted the county 11:53:01AM</p> <p>3 attorney's office. We've contacted the board of</p> <p>4 elections. We've contacted the police</p> <p>5 department.</p> <p>6 Q I have some more questions about 11:53:16AM</p> <p>7 residence, but I don't want to make it a memory</p> <p>8 game. It's possible I have another document</p> <p>9 that would help.</p> <p>10 MR. GRAFF: I will ask the reporter to 11:53:38AM</p> <p>11 mark this document. It's a one-page</p> <p>12 document form headed "Request for</p> <p>13 Certification of Eligibles," and this is</p> <p>14 also a document from the county's website.</p> <p>15 (Whereupon, Request for certification 11:53:51AM</p> <p>16 of eligibles and this is also a document</p> <p>17 from the County's website was marked as</p> <p>18 DiStefano Exhibit 6 for identification, as</p> <p>19 of this date.)</p> <p>20 BY MR. GRAFF: 11:54:56AM</p> <p>21 Q I'm going to move off of residency for 11:54:57AM</p> <p>22 a moment.</p> <p>23 Ms. DiStefano, do you recognize this 11:55:00AM</p> <p>24 document? (Handing.)</p> <p>25 A I do. 11:55:03AM</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 109</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q Could you identify the document, 11:55:03AM</p> <p>3 please?</p> <p>4 A It's a request for a list, a request 11:55:05AM</p> <p>5 for certification of eligibles.</p> <p>6 Q And it says underneath the heading 11:55:09AM</p> <p>7 "for appointing authorities only." What does</p> <p>8 "appointing authority" refer to in this context?</p> <p>9 A The appointing authority for whichever 11:55:19AM</p> <p>10 jurisdiction is requesting the list.</p> <p>11 Q And is the identity of the appointing 11:55:23AM</p> <p>12 authority something that Civil Service</p> <p>13 specifications control or is that something a</p> <p>14 municipality determines for itself?</p> <p>15 MR. NOVIKOFF: Objection. Form. 11:55:33AM</p> <p>16 A The municipality determines, and they 11:55:34AM</p> <p>17 file a signature slip with us identifying who is</p> <p>18 authorized to sign for them.</p> <p>19 Q And is that a form that they fill out 11:55:48AM</p> <p>20 and complete with respect to identifying</p> <p>21 their --</p> <p>22 A Yes. 11:55:54AM</p> <p>23 Q And does every municipality have to 11:55:58AM</p> <p>24 file such a form identifying the appointing</p> <p>25 authority?</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 110</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A Yes. 11:56:05AM</p> <p>3 Q Can a municipality have more than one 11:56:06AM</p> <p>4 appointing authority, say, for different parts</p> <p>5 of that municipality?</p> <p>6 A Yes. The county has appointing 11:56:15AM</p> <p>7 authorities in each department.</p> <p>8 Q Within each department within the 11:56:18AM</p> <p>9 municipality?</p> <p>10 A Within the county. The head of each 11:56:21AM</p> <p>11 department within the county is an appointing</p> <p>12 authority.</p> <p>13 Q Let's talk specifically within Ocean 11:56:28AM</p> <p>14 Beach. Could Ocean Beach have simultaneously</p> <p>15 more than one appointing authority for Ocean</p> <p>16 Beach?</p> <p>17 MR. NOVIKOFF: Objection. 11:56:37AM</p> <p>18 A They normally have one, and they can 11:56:38AM</p> <p>19 assign alternate signatures for our purposes.</p> <p>20 The mayor and the board would be the appointing</p> <p>21 authority.</p> <p>22 Q And who signs for the board? 11:56:48AM</p> <p>23 MR. NOVIKOFF: Objection. 11:56:54AM</p> <p>24 A I don't know if anybody signs for the 11:56:54AM</p> <p>25 board on Ocean Beach.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 111</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q Do you know who the appointing 11:56:59AM</p> <p>3 authority is for Ocean Beach?</p> <p>4 MS. ZWILLING: At what time? 11:57:02AM</p> <p>5 MR. GRAFF: Today. 11:57:04AM</p> <p>6 A I think right now it's the mayor and 11:57:04AM</p> <p>7 the clerk who sign the signature slip for us.</p> <p>8 Q And are they joint appointing 11:57:11AM</p> <p>9 authorities or can either of them sign that</p> <p>10 slip?</p> <p>11 A Either of them could if both names are 11:57:16AM</p> <p>12 on it.</p> <p>13 MR. GRAFF: To the extent an 11:57:21AM</p> <p>14 appointing authority form exists for Ocean</p> <p>15 Beach, if it wasn't produced, if you could</p> <p>16 please produce that.</p> <p>17 MS. ZWILLING: For which time frame? 11:57:29AM</p> <p>18 MR. GRAFF: The duration of 11:57:30AM</p> <p>19 plaintiffs' employment.</p> <p>20 MS. ZWILLING: Which goes back to? 11:57:35AM</p> <p>21 MR. GRAFF: 1991. 11:57:42AM</p> <p>22 BY MR. GRAFF: 11:57:46AM</p> <p>23 Q What is the purpose of this request 11:57:48AM</p> <p>24 for a certificate of eligibles form?</p> <p>25 MR. NOVIKOFF: Same objection. 11:57:54AM</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 112</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: What is whose purpose? 11:57:54AM</p> <p>3 MR. NOVIKOFF: Exactly. 11:57:57AM</p> <p>4 BY MR. GRAFF: 11:57:57AM</p> <p>5 Q For what purpose would an appointing 11:57:58AM</p> <p>6 authority complete this form and submit it to</p> <p>7 Civil Service?</p> <p>8 MS. ZWILLING: Objection. 11:58:03AM</p> <p>9 MR. NOVIKOFF: Objection. 11:58:04AM</p> <p>10 MS. ZWILLING: She can't speak to 11:58:05AM</p> <p>11 what's in the mind of the appointing</p> <p>12 authority. If you want to ask why the Civil</p> <p>13 Service makes this available or under what</p> <p>14 circumstances do they request it be filed, I</p> <p>15 have no objection.</p> <p>16 BY MR. GRAFF: 11:58:16AM</p> <p>17 Q Under what circumstances does Civil 11:58:18AM</p> <p>18 Service request this be filed by the appointing</p> <p>19 authority?</p> <p>20 A We do not request this form. 11:58:23AM</p> <p>21 Q Under what circumstances would a 11:58:24AM</p> <p>22 municipality submit this form to the Department</p> <p>23 of Civil Service?</p> <p>24 MR. NOVIKOFF: Objection to form. 11:58:35AM</p> <p>25 A If they have a position they want to 11:58:36AM</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 113</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 fill in the competitive class, they submit this</p> <p>3 form to us and we send them a list of eligible</p> <p>4 people from which they may choose their</p> <p>5 employee.</p> <p>6 Q And Number 1, there are two bubbles, 11:58:47AM</p> <p>7 one for residents only, one for entire list. Is</p> <p>8 this the place where they indicate whether they</p> <p>9 want the residence list or the county-wide list?</p> <p>10 A It's obvious. 11:59:03AM</p> <p>11 Q I wasn't sure if "entire list" might 11:59:03AM</p> <p>12 refer to anything other than the county-wide</p> <p>13 list.</p> <p>14 And is it ever possible -- strike 11:59:19AM</p> <p>15 that.</p> <p>16 Is it ever consistent the with Civil 11:59:24AM</p> <p>17 Service guidelines or specifications for a</p> <p>18 municipality to appoint or hire somebody for a</p> <p>19 Civil Service competitive class position without</p> <p>20 having first requested a certificate of</p> <p>21 eligibles?</p> <p>22 A What was the beginning of your 11:59:42AM</p> <p>23 question?</p> <p>24 Q Is it permissible under Civil Service 11:59:43AM</p> <p>25 guidelines or standards?</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

1 CYNTHIA DISTEFANO
2 A No. 11:59:49AM
3 Q You can put that aside. 11:59:53AM
4 Prior to the village administrator and 12:00:03PM
5 mayor being the appointed authorities in Ocean
6 Beach, do you know who immediately prior to that
7 the appointing authority was?
8 A I think it's the village clerk, not 12:00:17PM
9 the village administrator.
10 I don't know. 12:00:20PM
11 Q Does Civil Service have any guidelines 12:00:23PM
12 or specifications as far as who the appropriate
13 person within a municipality is to designate as
14 that appointing authority for the municipality?
15 A Yes. 12:00:35PM
16 Q What are those guidelines? 12:00:35PM
17 A The definitions in Civil Service law 12:00:37PM
18 to unclassified positions define department
19 heads who have the power to hire and fire. So
20 if someone is in the unclassified service in --
21 the mayor, a department head, town supervisor,
22 they are obviously the appointing authority.
23 Q Does the Civil Service Department -- 12:01:03PM
24 just for terminology, I've been referring to
25 guidelines or specifications. Do those terms
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1 CYNTHIA DISTEFANO
2 going to be objectionable or confusing, I
3 can drop it.
4 MS. ZWILLING: I'm guessing it 12:02:12PM
5 probably will be, but we'll see with the
6 individual questions.
7 BY MR. GRAFF: 12:02:15PM
8 Q If I say rule, would -- 12:02:15PM
9 MS. ZWILLING: Are they rules or regs? 12:02:17PM
10 THE WITNESS: They're Civil Service 12:02:19PM
11 rules and they're New York State laws, and
12 there are guidelines on how to apply those
13 things.
14 BY MR. GRAFF: 12:02:28PM
15 Q Okay. So maybe that was not the best 12:02:28PM
16 angle to simplify things.
17 Are there any Civil Service rules, 12:02:36PM
18 guidelines or specifications with respect to who
19 in a municipality can exercise hire and fire
20 authority?
21 A I just explained that. Civil Service 12:02:49PM
22 law and unclassified positions set that forth.
23 Q Okay. I'm not sure if I follow. 12:02:55PM
24 Can a person who holds a position in 12:03:06PM
25 the classified -- a Civil Service classified
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1 CYNTHIA DISTEFANO
2 mean the same thing in the context of Civil
3 Service?
4 A When I think of specification, I think 12:01:16PM
5 of the job specification, the description of a
6 particular class of positions.
7 Q So if I intend to ask a question more 12:01:=
8 22PM
9 broadly, any sort of Civil Service rule,
10 directive, is there a term I can use that would
11 shorten the question and we could understand
12 what I'm referring to?
13 A I would leave out specification in 12:01:37PM
14 that context.
15 Q Guideline is going to hit it? 12:01:41PM
16 A Guideline is not as binding as a law 12:01:43PM
17 or a rule. So you decide how you want to ask
18 the question.
19 MS. ZWILLING: In Civil Service, there 12:01:53PM
20 are local rules and there's also the state
21 Civil Service law.
22 MR. GRAFF: Right. I'm just looking 12:01:57PM
23 if there's a way to make the communication
24 easier, if there's a word I can use just for
25 the context of this deposition rather than
guideline, rule, regulation. If that's
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1 CYNTHIA DISTEFANO
2 position exercise hire or fire authority under
3 those guidelines, rules, specifications?
4 MR. NOVIKOFF: Objection. 12:03:20PM
5 A There are non-competitive department 12:03:21PM
6 heads in Suffolk County who are appointing
7 authorities. The personnel director is one.
8 The commissioner of social services is one. The
9 director of real property tax service is
10 another.
11 Q But an employee who holds a permanent 12:03:41PM
12 competitive class position cannot exercise
13 hire/fire authority under those guidelines,
14 rules, specifications?
15 MR. NOVIKOFF: Objection. 12:03:51PM
16 Is that a statement or a question? 12:03:51PM
17 MR. GRAFF: Question. 12:03:53PM
18 MR. NOVIKOFF: Objection to form. 12:03:54PM
19 A I'm not aware of any competitive class 12:04:00PM
20 person who would be an appointing authority.
21 Q Is there anything that you could 12:04:12PM
22 consult to determine definitively whether that's
23 the case?
24 MR. NOVIKOFF: Is there anything she 12:04:19PM
25 can consult?
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<p style="text-align: right;">Page 118</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 12:04:21PM</p> <p>3 Q Are there any documents -- 12:04:22PM</p> <p>4 A It doesn't meet -- 12:04:23PM</p> <p>5 MR. NOVIKOFF: Note my objection to 12:04:32PM</p> <p>6 the form.</p> <p>7 MS. ZWILLING: You can answer. 12:04:36PM</p> <p>8 A No, appointing authorities are 12:04:37PM</p> <p>9 normally not in a competitive class because</p> <p>10 they're specifically allowed not to be based on</p> <p>11 that status of being an appointing authority, an</p> <p>12 elected official or someone with the power to</p> <p>13 hire, and that's defined in whatever the laws</p> <p>14 are governing a particular municipality, whether</p> <p>15 it's a suburban town that lines out the</p> <p>16 departments or the county charter that describes</p> <p>17 the departments or village law, which describes</p> <p>18 the power of the mayor, town law, which</p> <p>19 describes the power of a supervisor. So none of</p> <p>20 those are competitive.</p> <p>21 MS. ZWILLING: And that's another 12:05:18PM</p> <p>22 situation, Arie. There are lots of laws</p> <p>23 governing these things, but it's not Civil</p> <p>24 Service law, and this witness is not being</p> <p>25 an attorney or being offered for any expert</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 119</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 purposes.</p> <p>3 MR. GRAFF: I'm just looking for 12:05:29PM</p> <p>4 whether there are Civil Service.</p> <p>5 MS. ZWILLING: Tons of other stuff. 12:05:31PM</p> <p>6 A Civil Service law specifically is the 12:05:33PM</p> <p>7 section on unclassified service.</p> <p>8 Q The Civil Service guidelines that you 12:05:43PM</p> <p>9 referred to before, where are those published?</p> <p>10 MR. NOVIKOFF: What, the state? 12:05:51PM</p> <p>11 A We have state -- New York State Civil 12:05:52PM</p> <p>12 Service law and we have Suffolk County Civil</p> <p>13 Service rules. Both are published.</p> <p>14 Q Is there a separate category of 12:06:01PM</p> <p>15 Suffolk County Civil Service guidelines?</p> <p>16 A No. 12:06:05PM</p> <p>17 Q Is there a separate category of 12:06:06PM</p> <p>18 Suffolk County Civil Service specifications?</p> <p>19 A Specifications are the job 12:06:11PM</p> <p>20 specifications. Each title has one.</p> <p>21 Q Other than the job specifications and 12:06:15PM</p> <p>22 the Suffolk County Civil Service rules, are</p> <p>23 there any other Suffolk County Civil Service</p> <p>24 writings that bear on Civil Service issues in</p> <p>25 Suffolk County?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 120</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A Yes. We have manuals for various 12:06:29PM</p> <p>3 things. The state produces manuals for various</p> <p>4 things.</p> <p>5 Q What types or what are the various 12:06:36PM</p> <p>6 things that Suffolk County produces its own</p> <p>7 manuals for, Suffolk County Civil Service?</p> <p>8 A Layoff procedures. That's the most 12:06:43PM</p> <p>9 official of the ones we do. That's available to</p> <p>10 the public.</p> <p>11 Q And are there any unofficial manuals? 12:06:59PM</p> <p>12 A There's interviewing techniques. 12:07:03PM</p> <p>13 That's really in-house.</p> <p>14 Q Are there any other in-house manuals? 12:07:08PM</p> <p>15 A Not that we produce. 12:07:13PM</p> <p>16 Q Are there other manuals that you use 12:07:19PM</p> <p>17 that neither the state nor Suffolk County Civil</p> <p>18 Service produces?</p> <p>19 A No. 12:07:27PM</p> <p>20 Q Other than state Civil Service law, 12:07:28PM</p> <p>21 Suffolk County Civil Service rules, job</p> <p>22 specifications and manuals, are there any other</p> <p>23 writings that govern the conduct or set forth</p> <p>24 requirements for Suffolk County Civil Service?</p> <p>25 MS. ZWILLING: Broadly speaking, the 12:07:46PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 121</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 county charter, village law, the</p> <p>3 municipal --</p> <p>4 MR. GRAFF: Right. I'm looking at the 12:07:50PM</p> <p>5 level of the Civil Service Department.</p> <p>6 MS. ZWILLING: All of those things do 12:07:53PM</p> <p>7 apply.</p> <p>8 MR. GRAFF: I understand. 12:07:56PM</p> <p>9 BY MR. GRAFF: 12:07:56PM</p> <p>10 Q Does Civil Service Department create 12:07:57PM</p> <p>11 anything else that governs its conduct in Civil</p> <p>12 Service issues in Suffolk County?</p> <p>13 A We create internal memos. 12:08:06PM</p> <p>14 Q Anything else? 12:08:10PM</p> <p>15 A Reports, memos. 12:08:14PM</p> <p>16 Q Are those internal reports? 12:08:16PM</p> <p>17 A They're internal. 12:08:18PM</p> <p>18 MS. ZWILLING: They create paperwork 12:08:20PM</p> <p>19 in the normal course of business, but I</p> <p>20 don't think that's what you're driving at.</p> <p>21 MR. GRAFF: No. 12:08:25PM</p> <p>22 BY MR. GRAFF: 12:08:26PM</p> <p>23 Q Who creates the manual for layoff 12:08:26PM</p> <p>24 procedures that you referred to?</p> <p>25 MS. ZWILLING: What does layoff 12:08:33PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 122	Page 123
<p>1 CYNTHIA DISTEFANO</p> <p>2 procedures have to do with this case? I</p> <p>3 assume we're talking about mass layoffs in</p> <p>4 the event of a budget difficulty.</p> <p>5 Is that what we're speaking of? 12:08:42PM</p> <p>6 THE WITNESS: Yes. 12:08:43PM</p> <p>7 BY MR. GRAFF: 12:08:45PM</p> <p>8 Q So who creates that? 12:08:45PM</p> <p>9 MS. ZWILLING: That pertains to the 12:08:48PM</p> <p>10 county, right?</p> <p>11 MR. NOVIKOFF: It has no relevancy. 12:08:51PM</p> <p>12 A It pertains to the competitive class. 12:08:56PM</p> <p>13 Q And who drafts it? 12:09:01PM</p> <p>14 A Whether it's a layoff in the county or 12:09:03PM</p> <p>15 in any of the jurisdictions, it would be applied</p> <p>16 the same way.</p> <p>17 Q Who creates that memo? 12:09:08PM</p> <p>18 A Our examinations division in 12:09:10PM</p> <p>19 compliance with Civil Service -- state Civil</p> <p>20 Service law.</p> <p>21 Q And do you know when the most recent 12:09:23PM</p> <p>22 version of that manual was created?</p> <p>23 A I do not. 12:09:27PM</p> <p>24 Q Have you seen that manual? 12:09:28PM</p> <p>25 A Of course. 12:09:29PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 Q Have you read through it? 12:09:30PM</p> <p>3 A Yes. 12:09:35PM</p> <p>4 MR. GRAFF: We request production of 12:09:35PM</p> <p>5 that.</p> <p>6 MS. ZWILLING: I'm going to object, 12:09:38PM</p> <p>7 because there was nobody on any side of this</p> <p>8 case that was laid off.</p> <p>9 MR. GRAFF: That's a question of 12:09:44PM</p> <p>10 terminology.</p> <p>11 MS. ZWILLING: As Civil Service 12:09:46PM</p> <p>12 defines layoff, I think we're talking about</p> <p>13 a very different situation.</p> <p>14 MR. GRAFF: I imagine if you could 12:09:51PM</p> <p>15 just produce the document, I could see that.</p> <p>16 MS. ZWILLING: We'll take it under 12:09:56PM</p> <p>17 advisement.</p> <p>18 BY MR. GRAFF: 12:10:12PM</p> <p>19 Q Ms. DiStefano, is there such a thing 12:10:13PM</p> <p>20 as a provisional appointment in the context of</p> <p>21 Suffolk County Civil Service?</p> <p>22 A Yes, there is. 12:10:19PM</p> <p>23 Q Could you explain what that is? 12:10:20PM</p> <p>24 A If there's no available eligible list 12:10:22PM</p> <p>25 for a specific title or if the eligible list has</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 124	Page 125
<p>1 CYNTHIA DISTEFANO</p> <p>2 been exhausted, there are less than three</p> <p>3 willing acceptors, an appointing authority may</p> <p>4 hire a provisional who meets the minimum</p> <p>5 qualifications and who has to take the next</p> <p>6 examination offered and be reachable for</p> <p>7 appointment when that list is established.</p> <p>8 Q And when you say "no eligible list," 12:10:47PM</p> <p>9 is that referring both to an area limited list</p> <p>10 and a county-wide list?</p> <p>11 A Yes. 12:10:57PM</p> <p>12 Q So neither of those can exist? 12:10:57PM</p> <p>13 A Yes. 12:11:00PM</p> <p>14 Q Under what circumstances would there 12:11:04PM</p> <p>15 not be in existence an eligible list for a</p> <p>16 position?</p> <p>17 A Eligible lists can last for four years 12:11:10PM</p> <p>18 by law. If they expire at the end of that</p> <p>19 four-year period and there has not been a new</p> <p>20 examination to establish a new list, then there</p> <p>21 is no eligible list, or if it's a brand new</p> <p>22 title and no exam has been given yet.</p> <p>23 Q And are exams given -- that is, for 12:11:28PM</p> <p>24 existing positions, are exams given at regular</p> <p>25 intervals?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 A It depends. We do some of our own 12:11:36PM</p> <p>3 exams. The state produces most of ours. The</p> <p>4 state does have a schedule for some common</p> <p>5 exams, but there's really no set time I could</p> <p>6 say every certain number of years we'll give</p> <p>7 this or that.</p> <p>8 Q And do you know on what basis it's 12:11:53PM</p> <p>9 determined when to hold an exam for a given</p> <p>10 title?</p> <p>11 A If we have a provisional in the title, 12:11:59PM</p> <p>12 we order the examination. Police officer</p> <p>13 examination is given every two years.</p> <p>14 Q And if there's a provisional in the 12:12:09PM</p> <p>15 title of police officer, would that accelerate</p> <p>16 the timing of the next exam?</p> <p>17 A There is never a provisional in the 12:12:17PM</p> <p>18 title of police officer.</p> <p>19 Q If there's a provisional in a title 12:12:21PM</p> <p>20 for which no eligible list exists, how soon</p> <p>21 after that provisional appointment is made is</p> <p>22 the next exam offered?</p> <p>23 MS. ZWILLING: Arie, the witness has 12:12:33PM</p> <p>24 just testified that there can be no</p> <p>25 provisional police officers. So your</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 126</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 questions with respect provisions are really</p> <p>3 way beyond anything that's relevant in this</p> <p>4 case.</p> <p>5 BY MR. GRAFF: 12:12:45PM</p> <p>6 Q Can there be a provisional appointment 12:12:45PM</p> <p>7 to police sergeant?</p> <p>8 MR. NOVIKOFF: In accordance with 12:12:52PM</p> <p>9 Civil Service law?</p> <p>10 MR. GRAFF: Yes. 12:12:54PM</p> <p>11 A I can't say I've ever seen one, but I 12:12:58PM</p> <p>12 would think the possibility could exist.</p> <p>13 Q If that possibility were to come 12:13:02PM</p> <p>14 about, would an examination for the position of</p> <p>15 police sergeant be scheduled?</p> <p>16 A Police sergeant, I believe, are on a 12:13:14PM</p> <p>17 regular rotation.</p> <p>18 Q Do you know what the interval of that 12:13:19PM</p> <p>19 is?</p> <p>20 A I think it's two years. I'm not sure. 12:13:22PM</p> <p>21 Two or four.</p> <p>22 Q And say that right after an 12:13:26PM</p> <p>23 examination is administered, within a few weeks,</p> <p>24 a provisional appointment is made to the</p> <p>25 position of police sergeant, would that</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 127</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 accelerate the timing of the next exam?</p> <p>3 A No. 12:13:38PM</p> <p>4 MS. ZWILLING: Why would a provisional 12:13:40PM</p> <p>5 appointment be made a few weeks after an</p> <p>6 exam?</p> <p>7 MR. GRAFF: A short period after the 12:13:47PM</p> <p>8 exam and the provisional list is exhausted.</p> <p>9 I'm just asking -- or the eligible list is</p> <p>10 exhausted. I'm just asking --</p> <p>11 MS. ZWILLING: Eligible list exhausted 12:13:53PM</p> <p>12 for police sergeant? Do you think that ever</p> <p>13 happens?</p> <p>14 MR. NOVIKOFF: Arie is asking this 12:13:59PM</p> <p>15 witness questions that are contained in the</p> <p>16 various Civil Service laws in McKinney's and</p> <p>17 out there. In fact, I find all these</p> <p>18 questions objectionable.</p> <p>19 THE WITNESS: Maybe for a locality, 12:14:18PM</p> <p>20 not for the county.</p> <p>21 MS. ZWILLING: Not for the county, no. 12:14:21PM</p> <p>22 People die on that list all the time, I</p> <p>23 think. Over and over, the same people.</p> <p>24 THE WITNESS: That's why we give it 12:14:25PM</p> <p>25 every two years.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 128</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 12:14:27PM</p> <p>3 Q Do you know approximately how many 12:14:27PM</p> <p>4 people are on the current eligible list for</p> <p>5 police sergeant?</p> <p>6 A It's a promotional list. So the 12:14:35PM</p> <p>7 number of people on it -- I don't know the</p> <p>8 figure, but there would be a total figure. But</p> <p>9 the promotional list is only certified to a</p> <p>10 particular municipality. So there would be a</p> <p>11 huge number for, say, the Suffolk County Police</p> <p>12 Department and a lesser number for the local</p> <p>13 jurisdictions.</p> <p>14 Q And when it's a promotional list, are 12:14:55PM</p> <p>15 there any exceptions in which a person can get</p> <p>16 onto that list without having satisfied the time</p> <p>17 in position requirement?</p> <p>18 A No. 12:15:08PM</p> <p>19 Q And does Civil Service have to -- do 12:15:15PM</p> <p>20 you know what the passing score is for the</p> <p>21 sergeant's exam?</p> <p>22 A It's 70 for all Civil Service 12:15:26PM</p> <p>23 examinations.</p> <p>24 Q And has that been the case from 2000 12:15:29PM</p> <p>25 to the present?</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 129</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A Its always been the case, to my 12:15:34PM</p> <p>3 knowledge.</p> <p>4 Q When a provisional appointment is 12:15:39PM</p> <p>5 made, does a municipality need to notify Civil</p> <p>6 Service pursuant to any Civil Service rules,</p> <p>7 specifications, guidelines?</p> <p>8 MR. NOVIKOFF: Objection to form. 12:15:53PM</p> <p>9 A Any appointment, any personnel action 12:15:54PM</p> <p>10 has to be reported to Civil Service.</p> <p>11 Q And does any particular information 12:15:58PM</p> <p>12 need to be reported in connection with the</p> <p>13 provisional appointment rather than another type</p> <p>14 of personnel change?</p> <p>15 MR. NOVIKOFF: Objection to form. 12:16:10PM</p> <p>16 A A personnel change has to be submitted 12:16:11PM</p> <p>17 and the application has to be submitted and</p> <p>18 approved so it's on file for the next</p> <p>19 examination.</p> <p>20 Q And when a provisional appointment is 12:16:21PM</p> <p>21 made, is the persona appointed to that position</p> <p>22 required to take the next exam for that position</p> <p>23 when it is offered?</p> <p>24 A Yes. I said that. 12:16:33PM</p> <p>25 MR. NOVIKOFF: Required? 12:16:34PM</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 130</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 12:16:35PM</p> <p>3 Q And what if such a person does not 12:16:36PM</p> <p>4 pass the first administration after their</p> <p>5 provisional appointment, can they, pursuant to</p> <p>6 Civil Service rules, guidelines, remain in that</p> <p>7 position?</p> <p>8 A If there is a valid eligible list with 12:16:52PM</p> <p>9 the name of three willing acceptors, then the</p> <p>10 person who fails has to be out within 60 days.</p> <p>11 If there are no willing -- if there are not</p> <p>12 three willing acceptors, then the jurisdiction</p> <p>13 could apply for a second provisional appointment</p> <p>14 for the person who failed.</p> <p>15 Q And would that second provisional 12:17:15PM</p> <p>16 appointment also require, under Civil Service</p> <p>17 guidelines, rules, specification, that the</p> <p>18 person that was re-provisionally appointed take</p> <p>19 the next scheduled exam after that?</p> <p>20 A Yes. 12:17:30PM</p> <p>21 Q And is it possible to get a third 12:17:30PM</p> <p>22 provisional appointment if there are not three</p> <p>23 willing eligibles?</p> <p>24 A Civil Service rules say that if the 12:17:38PM</p> <p>25 person fails two examinations, he cannot have a</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 131</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 third provisional appointment.</p> <p>3 Q What if a person fails to take a 12:17:46PM</p> <p>4 scheduled exam that is offered, does that count</p> <p>5 as one of their two fails?</p> <p>6 A Then they have to be removed from the 12:17:55PM</p> <p>7 position within I think it's 7 to 10 business</p> <p>8 days from the establishment of the list.</p> <p>9 Q Are there any exceptions to that? 12:18:01PM</p> <p>10 A No. 12:18:03PM</p> <p>11 Q Is there any maximum length of time 12:18:20PM</p> <p>12 that a provisional appointment can continue if</p> <p>13 no exam is scheduled --</p> <p>14 (Whereupon, a discussion was held off 12:18:41PM</p> <p>15 the record.)</p> <p>16 MR. GRAFF: For clarity, can we just 12:18:41PM</p> <p>17 strike that? That will be off the record.</p> <p>18 A The provisional can remain until the 12:18:50PM</p> <p>19 establishment of an eligible list, and then</p> <p>20 action must be taken within 60 days of the</p> <p>21 establishment of that list.</p> <p>22 Q And does the fact that there's 12:18:59PM</p> <p>23 somebody in the provisional appointment -- I</p> <p>24 know you said an eligible list would be created.</p> <p>25 Is there any period of time in which Civil</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 132</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Service, under its own guidelines, rules or</p> <p>3 specifications or state law, is required to</p> <p>4 generate an eligible list?</p> <p>5 MR. NOVIKOFF: Objection to form. 12:19:20PM</p> <p>6 MS. ZWILLING: Generate the list or 12:19:21PM</p> <p>7 give the test?</p> <p>8 MR. GRAFF: Administer the test and 12:19:24PM</p> <p>9 generate the list on the basis of the test.</p> <p>10 MS. ZWILLING: They're two different 12:19:27PM</p> <p>11 things, obviously.</p> <p>12 MR. GRAFF: Yes. 12:19:29PM</p> <p>13 MR. NOVIKOFF: Objection to form. 12:19:29PM</p> <p>14 A There is something in Civil Service 12:19:33PM</p> <p>15 law about a time frame, but it's not always met.</p> <p>16 It's an ideal, but it's not always met because</p> <p>17 the tests are not always offered in a timely</p> <p>18 fashion.</p> <p>19 MR. NOVIKOFF: Just note my objection 12:19:51PM</p> <p>20 to all these questions. They seem to be</p> <p>21 asking this witness to opine on issues that</p> <p>22 are memorialized in Civil Service law or in</p> <p>23 various documentation, and you're asking her</p> <p>24 to basically be an expert witness on Civil</p> <p>25 Service law.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 133</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 12:20:08PM</p> <p>3 Q Ms. DiStefano, is there such a thing 12:20:09PM</p> <p>4 as a temporary appointment to a competitive</p> <p>5 class Civil Service position?</p> <p>6 A Yes, there is. 12:20:16PM</p> <p>7 Q And could you explain what a temporary 12:20:17PM</p> <p>8 appointment is?</p> <p>9 A A temporary appointment is limited 12:20:21PM</p> <p>10 to -- up to six months, it can be made without</p> <p>11 using an eligible list, and after six months --</p> <p>12 I haven't looked at this in a while. It has to</p> <p>13 be -- no, I'm not sure of the time frame</p> <p>14 anymore.</p> <p>15 Q Would it refresh your recollection if 12:20:59PM</p> <p>16 I said past six months, the rule is that they</p> <p>17 need to be on an eligible list but the ranking</p> <p>18 can be disregarded?</p> <p>19 A There are three categories -- 12:21:09PM</p> <p>20 MR. NOVIKOFF: Hold on. 12:21:12PM</p> <p>21 You're refreshing her recollection by 12:21:12PM</p> <p>22 telling her what the rule is, but your</p> <p>23 underlining question is asking her what is</p> <p>24 the rule is.</p> <p>25 MR. GRAFF: I don't know that that's 12:21:21PM</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

Page 134	Page 135
<p>1 CYNTHIA DISTEFANO</p> <p>2 necessarily the rule that's applicable in</p> <p>3 the context of Suffolk County Department of</p> <p>4 Civil Service. That's what I'm asking. I'm</p> <p>5 aware of a rule. I'm trying to confirm if</p> <p>6 that's what the rule is here.</p> <p>7 MS. ZWILLING: May I suggest you just 12:21:31PM</p> <p>8 ask her what of the rule she knows.</p> <p>9 MR. NOVIKOFF: Right. Is it codified 12:21:36PM</p> <p>10 somewhere so you can look it up? Because</p> <p>11 apparently you have it. If you're asking</p> <p>12 her questions as to what the Civil Service</p> <p>13 law requires, that is somewhere memorialized</p> <p>14 in either the New York State Civil Service</p> <p>15 law or the Suffolk County regs. If it's</p> <p>16 not, then I think it's an appropriate</p> <p>17 question, Mr. Graff. But what you're asking</p> <p>18 her is to give you answers -- and I think by</p> <p>19 the witness nodding her head, she agrees</p> <p>20 with me. You're asking her questions about</p> <p>21 what the Civil Service law requires. To me,</p> <p>22 that means either you haven't done your</p> <p>23 research or it's readily ascertainable</p> <p>24 through McKinney's or some other</p> <p>25 publication, and I think it's inappropriate</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 to keep asking this witness questions as to</p> <p>3 is there a -- for example, you asked</p> <p>4 this question, is there a provision --</p> <p>5 MR. GRAFF: No, no. Your speaking is 12:22:30PM</p> <p>6 improper here.</p> <p>7 MR. NOVIKOFF: Then you can call the 12:22:30PM</p> <p>8 judge up, because I'm going to be making a</p> <p>9 motion for sanctions on this one.</p> <p>10 You've asked the witness, for example, 12:22:33PM</p> <p>11 is there such a thing as a provisional</p> <p>12 employee. I guarantee you there's probably</p> <p>13 five different places in New York State</p> <p>14 Civil Service law that defines what a</p> <p>15 provisional employee is.</p> <p>16 MS. ZWILLING: And I'm constrained to 12:22:45PM</p> <p>17 point out, quite frankly, that this is the</p> <p>18 second deposition we've had for purposes</p> <p>19 into -- of inquiring into what various</p> <p>20 aspects of Civil Service law mean. I'm not</p> <p>21 suggesting I'm cutting you off at this</p> <p>22 point, but certainly what the law is is</p> <p>23 readily available in McKinney's, and it's</p> <p>24 not what this witness is here for.</p> <p>25 MR. GRAFF: Okay. The fact that a law 12:23:08PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 136	Page 137
<p>1 CYNTHIA DISTEFANO</p> <p>2 exists in McKinney's does not necessarily</p> <p>3 mean that that is the law as understood and</p> <p>4 applied by the department. It's a 30(b)(6)</p> <p>5 designee. I'm asking her --</p> <p>6 MR. NOVIKOFF: And ask those 12:23:19PM</p> <p>7 questions, then. Then ask her does the law</p> <p>8 as codified in Civil Service law X, have you</p> <p>9 ever applied it inconsistently or are there</p> <p>10 exceptions that are not codified. I get</p> <p>11 those questions, Arie. I understand this</p> <p>12 completely. But if you're going to ask this</p> <p>13 witness for an hour and a half what a</p> <p>14 specific law is, that's improper because</p> <p>15 that's in McKinney's.</p> <p>16 BY MR. GRAFF: 12:23:42PM</p> <p>17 Q Ms. DiStefano, do you know where, if 12:23:42PM</p> <p>18 anywhere, the rules governing temporary</p> <p>19 appointments are codified?</p> <p>20 A In McKinney's. 12:23:51PM</p> <p>21 Q Where in McKinney's? 12:23:53PM</p> <p>22 A In Civil Service law. 12:23:55PM</p> <p>23 Q Is there a particular provision? 12:23:58PM</p> <p>24 MS. ZWILLING: Arie, you're the 12:24:00PM</p> <p>25 attorney here.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 MR. GRAFF: That's my point. 12:24:=</p> <p>02PM</p> <p>3 MS. ZWILLING: She doesn't need to 12:24:03PM</p> <p>4 identify it. It's incumbent upon you as the</p> <p>5 attorney to familiarize yourself with it.</p> <p>6 MR. NOVIKOFF: Do you have it here, 12:24:10PM</p> <p>7 because I'm sure if you look under the index</p> <p>8 here, I'm sure the index will provide you</p> <p>9 the answers.</p> <p>10 MS. ZWILLING: It's all right you 12:24:15PM</p> <p>11 there. If you want, we can even make it</p> <p>12 available to you.</p> <p>13 MR. GRAFF: I'll ask the court 12:24:19PM</p> <p>14 reporter to mark as Exhibit DiStefano 7 a</p> <p>15 two-page document. I'll represent that this</p> <p>16 is a printout from LexisNexis of New York</p> <p>17 Civil Service Civil Service Law, Section 64.</p> <p>18 MR. NOVIKOFF: So you've undertaken 12:24:35PM</p> <p>19 research.</p> <p>20 (Whereupon, LexisNexis of New York 12:24:38PM</p> <p>21 civil service civil service law section 64</p> <p>22 was marked as DiStefano Exhibit 7 for</p> <p>23 identification, as of this date.)</p> <p>24 MR. NOVIKOFF: Let the record reflect 12:25:15PM</p> <p>25 that Mr. Graff has now identified as a</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 138	Page 139
<p>1 CYNTHIA DISTEFANO</p> <p>2 deposition exhibit Civil Service Law</p> <p>3 Section 64, which is titled "Temporary</p> <p>4 Appointments." And I believe the question</p> <p>5 that precipitated this entire round of</p> <p>6 discussion was to this witness, do you know</p> <p>7 or is there any reference to temporary</p> <p>8 appointments in the Civil Service law. And</p> <p>9 I just then question why this wasn't shown</p> <p>10 to this witness at the get go and then</p> <p>11 proceed with any questions.</p> <p>12 MR. GRAFF: We'll see how it goes. 12:25:44PM</p> <p>13 BY MR. GRAFF: 12:25:51PM</p> <p>14 Q Please let me know when you're done. 12:25:52PM</p> <p>15 A I'm familiar with it. 12:25:57PM</p> <p>16 MR. NOVIKOFF: Ask her a question. 12:25:58PM</p> <p>17 And then if she needs to look at the statute</p> <p>18 to answer the question, she can.</p> <p>19 BY MR. GRAFF: 12:26:04PM</p> <p>20 Q Without focusing on the format of this 12:26:06PM</p> <p>21 document, have you read this Section 64</p> <p>22 before --</p> <p>23 A Yes. 12:26:12PM</p> <p>24 Q -- about temporary appointments? 12:26:12PM</p> <p>25 Other than what's -- well, first of 12:26:15PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 all, is this the law on temporary appointments</p> <p>3 that's applied by the Suffolk County Civil</p> <p>4 Service Department?</p> <p>5 A Yes. 12:26:22PM</p> <p>6 Q Is there any other law on temporary 12:26:22PM</p> <p>7 appointments that's applied by Suffolk County</p> <p>8 Civil Service?</p> <p>9 MR. NOVIKOFF: As opposed to New York 12:26:28PM</p> <p>10 State case law that has interpreted</p> <p>11 Section 64.</p> <p>12 MR. GRAFF: Yes. I'm asking about 12:26:31PM</p> <p>13 rules or regulations, specifications,</p> <p>14 guidelines.</p> <p>15 MR. NOVIKOFF: Your question was was 12:26:36PM</p> <p>16 there any other law that Suffolk County</p> <p>17 Civil Service uses in connection with</p> <p>18 temporary appointments. We have the</p> <p>19 statute, and then we must realize that case</p> <p>20 law has interpreted the statute. So when</p> <p>21 you say is there any other law, are you</p> <p>22 referring specifically to the statute or are</p> <p>23 you referring to the statute as interpreted</p> <p>24 by the state and federal courts that have</p> <p>25 applied the statute?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 140	Page 141
<p>1 CYNTHIA DISTEFANO</p> <p>2 MR. GRAFF: Neither. 12:26:58PM</p> <p>3 BY MR. GRAFF: 12:26:58PM</p> <p>4 Q I'm asking, are there any other 12:26:59PM</p> <p>5 writings that are the source of guidelines or</p> <p>6 standards for temporary appointments that are</p> <p>7 used by the Suffolk County Department of Civil</p> <p>8 Service?</p> <p>9 MR. NOVIKOFF: Objection. Form. 12:27:12PM</p> <p>10 A We are bound to abide by New York 12:27:13PM</p> <p>11 State law. This is the New York State law</p> <p>12 pertaining to temporary appointments.</p> <p>13 Q And is there anything that supplements 12:27:22PM</p> <p>14 or expands New York State law for temporary</p> <p>15 appointments?</p> <p>16 MS. ZWILLING: Are you asking if there 12:27:28PM</p> <p>17 are any Civil Service rules covering</p> <p>18 temporary employment?</p> <p>19 MR. GRAFF: Yes. 12:27:33PM</p> <p>20 MR. NOVIKOFF: Then ask that question. 12:27:35PM</p> <p>21 MS. ZWILLING: Yeah. 12:27:36PM</p> <p>22 A We define temporary appointment in our 12:27:37PM</p> <p>23 rules. It does not differ from this.</p> <p>24 Q And is that in the Civil Service 12:27:42PM</p> <p>25 rules that --</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 A Yes, it is. 12:27:45PM</p> <p>3 Q And other than the rules in the Civil 12:27:48PM</p> <p>4 Service rules, are there any other rules that</p> <p>5 govern temporary appointments?</p> <p>6 MR. NOVIKOFF: Objection to form. 12:27:57PM</p> <p>7 MS. ZWILLING: Objection. 12:27:58PM</p> <p>8 A No. 12:27:59PM</p> <p>9 MR. GRAFF: I'll note that this 12:28:04PM</p> <p>10 document is dated 2009.</p> <p>11 MR. NOVIKOFF: It says current as of 12:28:09PM</p> <p>12 April 30th, 2009.</p> <p>13 MS. ZWILLING: And it's, for purposes 12:28:12PM</p> <p>14 of the record, not a record which we</p> <p>15 produced. It is a document which apparently</p> <p>16 you generated, Mr. Graff.</p> <p>17 MR. GRAFF: Yes. I noted that when it 12:28:20PM</p> <p>18 was introduced.</p> <p>19 MR. NOVIKOFF: And please don't ask 12:28:23PM</p> <p>20 her if this law has been supplemented since</p> <p>21 April 30th, 2009, because that's something</p> <p>22 you should've done research on.</p> <p>23 MR. GRAFF: I wasn't going to ask her 12:28:34PM</p> <p>24 that. And your ongoing commentaries is</p> <p>25 disruptive.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 142	Page 143
<p>1 CYNTHIA DISTEFANO</p> <p>2 MR. NOVIKOFF: I think it's helpful. 12:28:38PM</p> <p>3 MR. GRAFF: I'm telling you it's 12:28:41PM</p> <p>4 disruptive. I'm asking her questions.</p> <p>5 MR. NOVIKOFF: I don't think so. 12:28:45PM</p> <p>6 BY MR. GRAFF: 12:28:49PM</p> <p>7 Q Do you know if there was a previous 12:28:50PM</p> <p>8 version of this Section 64 that was applied by</p> <p>9 the department at any point from 2000 to the</p> <p>10 present?</p> <p>11 MR. NOVIKOFF: Note my objection. 12:29:01PM</p> <p>12 McKinney's, if you looked at it, would have</p> <p>13 a section laws preceding this, and it would</p> <p>14 give you an entire history of what preceded</p> <p>15 this particular section.</p> <p>16 MS. ZWILLING: As attorneys, we 12:29:12PM</p> <p>17 probably don't know if there was any version</p> <p>18 after 2000.</p> <p>19 MR. GRAFF: If the witness doesn't 12:29:16PM</p> <p>20 know --</p> <p>21 MR. NOVIKOFF: Why are you asking this 12:29:18PM</p> <p>22 witness that, when it's set forth in</p> <p>23 McKinney's? Every statute in McKinney's,</p> <p>24 underneath the body of the section says what</p> <p>25 the prior laws were preceding this section.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 A We get McKinney's. We get pocket 12:29:33PM</p> <p>3 amendments every year. When something arises,</p> <p>4 we look up to see what is the current. To</p> <p>5 detail how they changed over the years is not</p> <p>6 possible for me to do.</p> <p>7 Q Okay. Thank you. That was really 12:29:47PM</p> <p>8 what my question was focused on. I appreciate</p> <p>9 your help in getting there.</p> <p>10 When there are updates or revisions, 12:29:54PM</p> <p>11 is there any training program or formalized</p> <p>12 instruction within the department to provide</p> <p>13 training to personnel analysts --</p> <p>14 MS. ZWILLING: Arie, is there some 12:30:08PM</p> <p>15 sort of claim that someone misinterpreted a</p> <p>16 provision of Civil Service law here?</p> <p>17 Because I haven't heard such a claim made at</p> <p>18 any time in the history of this case.</p> <p>19 MR. NOVIKOFF: Either the Village of 12:30:18PM</p> <p>20 Ocean Beach violated Civil Service law in</p> <p>21 something they did pertaining to either</p> <p>22 Mr. Hesse or any of the plaintiffs here or</p> <p>23 any of the police officer or they didn't.</p> <p>24 But there is no claim against Suffolk County</p> <p>25 Civil Service Department for failure to</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 144	Page 145
<p>1 CYNTHIA DISTEFANO</p> <p>2 apply whatever rules or regulations.</p> <p>3 MR. GRAFF: I don't agree with that. 12:30:37PM</p> <p>4 MR. NOVIKOFF: So I join in with 12:30:41PM</p> <p>5 Ms. Zwilling's comment.</p> <p>6 MS. ZWILLING: You can join in with 12:30:41PM</p> <p>7 the comment. I don't know that it's an</p> <p>8 objection. You made your point.</p> <p>9 MR. NOVIKOFF: Maybe we should call 12:30:46PM</p> <p>10 the judge up.</p> <p>11 BY MR. GRAFF: 12:30:47PM</p> <p>12 Q Is there any training -- as I asked, 12:30:48PM</p> <p>13 when there are new developments in the state</p> <p>14 Civil Service law, how are those developments</p> <p>15 communicated to personnel and what's --</p> <p>16 MS. ZWILLING: Is there someone in 12:31:06PM</p> <p>17 this case, either plaintiff, defendant,</p> <p>18 witness, what have you, that was a temporary</p> <p>19 employee? I mean, this statute is so far</p> <p>20 afield.</p> <p>21 MR. GRAFF: I'm not asking only with 12:31:15PM</p> <p>22 respect to Section 64. I'm asking the</p> <p>23 broader question.</p> <p>24 MS. ZWILLING: What is the -- why are 12:31:19PM</p> <p>25 you inquiring about how we enforce</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 modifications in the law when there is</p> <p>3 nothing in the case, no allegation related</p> <p>4 to that? I mean, I think I've been</p> <p>5 exceedingly patient.</p> <p>6 MR. GRAFF: Number 7 on the fourth 12:31:38PM</p> <p>7 page of the 30(B)(6) Notice asks about any</p> <p>8 and all training provided by Suffolk County</p> <p>9 Department of Civil Service to personnel</p> <p>10 analysts, principal personnel analysts.</p> <p>11 MS. ZWILLING: That it's in the 12:31:49PM</p> <p>12 30(B)(6) Notice doesn't make it proper. I</p> <p>13 certainly would have no objection to your</p> <p>14 questions about training with respect to the</p> <p>15 facts of this case, but the witness is not</p> <p>16 here to give you an abstract dissertation on</p> <p>17 the procedures of Suffolk County Civil</p> <p>18 Service.</p> <p>19 MR. GRAFF: I don't want to argue back 12:32:08PM</p> <p>20 and forth. If you want to instruct the</p> <p>21 witness not to answer the question, I will</p> <p>22 move on.</p> <p>23 MS. ZWILLING: I will at this time. 12:32:14PM</p> <p>24 And please do move on. And if necessary,</p> <p>25 I'm not saying that we can't take it up</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 146</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 later, but at this point I am going to ask</p> <p>3 you to move on to another area.</p> <p>4 MR. GRAFF: Okay. If we could just 12:32:32PM</p> <p>5 mark that.</p> <p>6 MS. ZWILLING: I mean, I can't help 12:32:32PM</p> <p>7 but point out that at this pace we're not</p> <p>8 going to get this done in the allotted seven</p> <p>9 hours. This witness has a wealth of</p> <p>10 information about the actual allegations in</p> <p>11 this case, and I would think you would want</p> <p>12 to focus on those things.</p> <p>13 MR. GRAFF: I want to focus, 12:32:46PM</p> <p>14 hopefully -- I should note, although it's</p> <p>15 abundantly clear from the record, the</p> <p>16 colloquy and commentary going on is impeding</p> <p>17 progress.</p> <p>18 MS. ZWILLING: I think I'm trying to 12:32:57PM</p> <p>19 limit my commentary. In any event, you have</p> <p>20 your seven hours, and after that, of course</p> <p>21 she will not be back.</p> <p>22 MR. NOVIKOFF: And it would be your 12:33:06PM</p> <p>23 seven hours minus whatever colloquy.</p> <p>24 MR. GRAFF: We'll deal with that if it 12:33:10PM</p> <p>25 comes up. I'll include that observation on</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 147</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 that colloquy.</p> <p>3 CD 8 is a multi-page document, I'll 12:33:21PM</p> <p>4 represent a Lexis printout of Section 65</p> <p>5 Civil Service Law, entitled "Provisional</p> <p>6 Appointments."</p> <p>7 (Whereupon, a Lexis printout of civil 12:33:47PM</p> <p>8 service law section 65 titled provisional</p> <p>9 appointments was marked as DiStefano Exhibit</p> <p>10 8 for identification, as of this date.)</p> <p>11 MS. ZWILLING: I just do want to note 12:34:16PM</p> <p>12 for the record that, you know, prior to your</p> <p>13 questioning the witness about the meaning of</p> <p>14 Section 65 of the Civil Service law, the</p> <p>15 witness has already testified rather</p> <p>16 emphatically that there is no such thing as</p> <p>17 a provisional police officer. So this one</p> <p>18 would seem to have not the remotest</p> <p>19 connection with this matter.</p> <p>20 MR. GRAFF: Relevance, I don't need to 12:34:37PM</p> <p>21 defend on the record of the deposition.</p> <p>22 BY MR. GRAFF: 12:34:43PM</p> <p>23 Q Ms. DiStefano, my only question on 12:34:43PM</p> <p>24 this document is whether or not this Section 65</p> <p>25 on provisional appointments is the Civil Service</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 148</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 law applied by the Suffolk County Department of</p> <p>3 Civil Service.</p> <p>4 MR. NOVIKOFF: You're kidding me, 12:34:54PM</p> <p>5 right? That's your question?</p> <p>6 MR. GRAFF: Yes. 12:34:57PM</p> <p>7 A All Civil Service law is applied by 12:34:57PM</p> <p>8 the Suffolk County Civil Service Department.</p> <p>9 Q Do you recognize this? 12:35:02PM</p> <p>10 A I do. 12:35:03PM</p> <p>11 MS. ZWILLING: Are you asking her to 12:35:04PM</p> <p>12 swear verbatim this is identical? We're all</p> <p>13 attorneys, and I would venture to say if you</p> <p>14 showed me any section from McKinney's, any</p> <p>15 of the volumes, I wouldn't have the</p> <p>16 slightest clue whether or not it was the law</p> <p>17 as written.</p> <p>18 MR. NOVIKOFF: Oh, God. 12:35:21PM</p> <p>19 MS. ZWILLING: Maybe if you want to 12:35:31PM</p> <p>20 ask counsel to stipulate that this is</p> <p>21 Section 65.</p> <p>22 MR. NOVIKOFF: And it comes from 65 of 12:35:40PM</p> <p>23 the Civil Service Law.</p> <p>24 BY MR. GRAFF: 12:35:41PM</p> <p>25 Q Ms. DiStefano, in connection with the 12:35:41PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 149</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 eligibles lists that we have been talking about,</p> <p>3 is that a terminology that you've used or are</p> <p>4 familiar with in this context?</p> <p>5 A Willing acceptors. 12:35:54PM</p> <p>6 Q What is a willing acceptor? 12:35:55PM</p> <p>7 A Someone who wants the particular job 12:35:57PM</p> <p>8 that's offered.</p> <p>9 Q And how is it determined whether the 12:36:01PM</p> <p>10 individuals on the eligible list are willing</p> <p>11 acceptors?</p> <p>12 A They get canvassed. They get sent a 12:36:08PM</p> <p>13 letter, are they interested or are they not</p> <p>14 interested. And those who are interested then</p> <p>15 constitute the list that has to be used. Those</p> <p>16 are the willing acceptors.</p> <p>17 Q And is a canvass letter sent to 12:36:21PM</p> <p>18 everybody on the eligible list or is there some</p> <p>19 score cutoff for who gets it?</p> <p>20 A It's a reasonable determination, how 12:36:30PM</p> <p>21 many you need to fill your positions. If we</p> <p>22 have a police officer list of 25,000 people,</p> <p>23 we're not going to send 25,000 letters.</p> <p>24 Q And is that a determination made 12:36:42PM</p> <p>25 internally in the Civil Service Department?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 150</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A It can be made by the appointing 12:36:45PM</p> <p>3 authority. We will guide them if they ask us of</p> <p>4 what score they need to go down to to get a</p> <p>5 reasonable number of respondents.</p> <p>6 Q And who actually sends off the canvass 12:36:56PM</p> <p>7 letters? Is that a municipality or the Civil</p> <p>8 Service Department?</p> <p>9 A It's usually the municipality. 12:37:03PM</p> <p>10 Sometimes we do it for them.</p> <p>11 Q Ms. DiStefano, I know it wasn't set 12:37:21PM</p> <p>12 out in our 30(B)(6) Notice, which is why I'm</p> <p>13 going to ask. Have you read the complaint in</p> <p>14 this lawsuit?</p> <p>15 A Yes. 12:37:32PM</p> <p>16 Q I'll note, I have available -- I'm not 12:37:40PM</p> <p>17 necessarily going to mark it, but I can provide</p> <p>18 it to you if it will refresh your recollection</p> <p>19 on any issues or be helpful, Section --</p> <p>20 MR. NOVIKOFF: You haven't established 12:37:50PM</p> <p>21 that she has not had her recollection</p> <p>22 refreshed.</p> <p>23 MR. GRAFF: I said if it comes to 12:37:54PM</p> <p>24 that. I just want to make the witness</p> <p>25 aware.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 151</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 12:37:58PM</p> <p>3 Q I'm not trying to quiz your memory. 12:37:58PM</p> <p>4 Section 75B, Retaliatory Action by 12:38:02PM</p> <p>5 Public Employers, are you familiar with that</p> <p>6 section?</p> <p>7 A I've read it. I wouldn't say I'm 12:38:08PM</p> <p>8 familiar, overly familiar with it.</p> <p>9 Q Does Suffolk County Civil Service have 12:38:12PM</p> <p>10 any rules, guidelines or specifications that</p> <p>11 supplement or modify Section 75B?</p> <p>12 MS. ZWILLING: Objection. Your 12:38:22PM</p> <p>13 question presumes that Section 75 is</p> <p>14 within -- implementing that is within their</p> <p>15 jurisdiction. I think you need to establish</p> <p>16 first the extent to which it is within their</p> <p>17 jurisdiction, if any.</p> <p>18 MR. GRAFF: Well, if the answer is 12:38:37PM</p> <p>19 yes, then I can know that it's within the</p> <p>20 jurisdiction. If the answer is no, I'll ask</p> <p>21 a second question.</p> <p>22 MS. ZWILLING: Would you kindly ask 12:38:44PM</p> <p>23 that foundational question first.</p> <p>24 MR. GRAFF: I'm not required to ask 12:38:47PM</p> <p>25 foundational questions, but I will kindly</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 152</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 ask.</p> <p>3 MS. ZWILLING: Thank you. 12:38:52PM</p> <p>4 BY MR. GRAFF: 12:38:52PM</p> <p>5 Q Is it within the jurisdiction or scope 12:38:52PM</p> <p>6 of authority of the Suffolk County Civil Service</p> <p>7 Department to supplement or modify any aspect of</p> <p>8 75B?</p> <p>9 MS. ZWILLING: Objection. 12:39:05PM</p> <p>10 That was not my objection. Maybe I 12:39:05PM</p> <p>11 didn't make myself clear, so let me clarify</p> <p>12 it. Your question presumes that Civil</p> <p>13 Service in some way enforces or implements</p> <p>14 that section of Civil Service law. The</p> <p>15 foundation question I was hoping you would</p> <p>16 ask was to what extent, if any, does Suffolk</p> <p>17 County Civil Service implement or enforce</p> <p>18 that section. Because if they -- certainly,</p> <p>19 they can't enact rules or procedures with</p> <p>20 respect to that to any greater extent than</p> <p>21 it's their responsibility to enforce that.</p> <p>22 MR. GRAFF: Okay. Word for word, if 12:39:45PM</p> <p>23 Ms. DiStefano followed that question, I'm</p> <p>24 not going to oppose that.</p> <p>25 MS. ZWILLING: I'm not sure she did 12:39:53PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 153</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 because I spoke quite a bit there, but why</p> <p>3 don't you rephrase the question.</p> <p>4 BY MR. GRAFF: 12:39:59PM</p> <p>5 Q To what extent, if any, does the 12:39:59PM</p> <p>6 Suffolk County Department of Civil Service</p> <p>7 enforce or implement Section 75B?</p> <p>8 A We have looked into county complaints 12:40:08PM</p> <p>9 pertaining to whistle blowing. I'm not aware of</p> <p>10 any involvement with non-county situations.</p> <p>11 Q And when you say non-county 12:40:26PM</p> <p>12 situations, you mean situations not involving</p> <p>13 whistle blowing county employees?</p> <p>14 A Yes. 12:40:34PM</p> <p>15 Q Is the Suffolk County Department of 12:40:36PM</p> <p>16 Civil Service required to, itself, comply with</p> <p>17 Section 75B? Is it applicable to the conduct of</p> <p>18 this department?</p> <p>19 MS. ZWILLING: Objection. That calls 12:40:50PM</p> <p>20 for a legal conclusion. The witness is not</p> <p>21 an attorney. If you want to ask her what</p> <p>22 they do, and I think you have already gotten</p> <p>23 that testimony, the question is proper.</p> <p>24 Obviously, any question about whether and to</p> <p>25 what extent the law applies is not a proper</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 154</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 question to this witness.</p> <p>3 MR. GRAFF: I don't know that I agree, 12:41:=</p> <p>4 08PM</p> <p>5 but I'll let that go.</p> <p>6 MR. NOVIKOFF: Appreciate it. 12:41:11PM</p> <p>7 BY MR. GRAFF: 12:41:12PM</p> <p>8 Q Does Suffolk County Civil Service 12:41:13PM</p> <p>9 provide any information or guidance of any sort</p> <p>10 to municipalities within the county regarding</p> <p>11 any obligations that they may have under</p> <p>12 Section 75B?</p> <p>13 A We would provide information about the 12:41:38PM</p> <p>14 Civil Service protection afforded to a</p> <p>15 particular person, whether or not that was</p> <p>16 relative to 75B.</p> <p>17 Q What about an employee who is not -- 12:41:55PM</p> <p>18 strike that. I can be more specific.</p> <p>19 What about a part-time seasonal police 12:42:04PM</p> <p>20 officer who does not have a permanent -- to the</p> <p>21 extent that they do not have permanent</p> <p>22 protection under the Civil Service law?</p> <p>23 MR. NOVIKOFF: Objection. What about 12:42:17PM</p> <p>24 a part-time seasonal? Isn't it either</p> <p>25 part-time or it's seasonal. I think</p> <p>seasonal is defined in a certain manner as</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 155</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 being two weeks before Memorial Day and two</p> <p>3 weeks after Labor Day, and then there's</p> <p>4 within the Civil Service law part-time</p> <p>5 definitions. So I'm objecting to the form.</p> <p>6 MR. GRAFF: Strike the form of that 12:42:36PM</p> <p>7 question.</p> <p>8 MS. ZWILLING: And, Arie, I'm also 12:42:39PM</p> <p>9 constrained to point out that whistle</p> <p>10 blowing is a broad category. There is the</p> <p>11 whistle blowing of my boss mistreats</p> <p>12 everybody who is working for him, and then</p> <p>13 there is while I was going shopping after I</p> <p>14 got off work, I saw my boss rob a bank. If</p> <p>15 you see your boss rob a bank, I think we can</p> <p>16 all agree that Civil Service would not have</p> <p>17 any jurisdiction to deal with the commission</p> <p>18 of the crime.</p> <p>19 MR. GRAFF: Let me help narrow it 12:43:08PM</p> <p>20 down.</p> <p>21 Let me mark as CD 9 the actual text of 12:43:12PM</p> <p>22 75B.</p> <p>23 (Whereupon, Text of 75-b was marked as 12:43:20PM</p> <p>24 DiStefano Exhibit 9 for identification, as</p> <p>25 of this date.)</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 156</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 12:43:51PM</p> <p>3 Q And Ms. DiStefano, you can certainly 12:43:51PM</p> <p>4 take time to look at the document, if you want.</p> <p>5 My questions are going to be on a very specific</p> <p>6 section of the text that I can point you to.</p> <p>7 A Go ahead. 12:44:17PM</p> <p>8 Q On the second page, Number 2, (A) and 12:44:18PM</p> <p>9 then (ii). Do you see the section I'm referring</p> <p>10 to?</p> <p>11 A Yes. I want to put it together. 12:44:36PM</p> <p>12 Q Sure. 12:44:38PM</p> <p>13 A I have read that section. 12:44:57PM</p> <p>14 Q As far as the language within that 12:44:59PM</p> <p>15 section, "reasonably believes to be true and</p> <p>16 reasonably believes constitutes an improper</p> <p>17 governmental action," do you have any</p> <p>18 information as to how it is the reasonableness</p> <p>19 of that belief is evaluated?</p> <p>20 MS. ZWILLING: Objection. 12:45:17PM</p> <p>21 MR. NOVIKOFF: Objection. 12:45:17PM</p> <p>22 MS. ZWILLING: I want to make it very 12:45:18PM</p> <p>23 clear at this point, because, one, you're</p> <p>24 asking the witness to interpret a statute,</p> <p>25 which she can't do.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 157</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MR. NOVIKOFF: Right. 12:45:26PM</p> <p>3 MS. ZWILLING: Moreover, the statute 12:45:27PM</p> <p>4 pertains to the employer. It says so</p> <p>5 explicitly. So I have two objections here.</p> <p>6 One is you're asking the witness, who's not</p> <p>7 an attorney, to interpret a legal statute.</p> <p>8 And two, you're asking her to interpret a</p> <p>9 statute which, by its language, applies to</p> <p>10 some other entity other than the one she is</p> <p>11 employed by. So I'm not going to permit her</p> <p>12 to answer that.</p> <p>13 MR. NOVIKOFF: And I'm going to go one 12:46:00PM</p> <p>14 step further. And number three, you've just</p> <p>15 asked this witness to opine on what case</p> <p>16 law, I'm sure over the last half century,</p> <p>17 has already discussed as to what the</p> <p>18 interpretation of reasonability is within</p> <p>19 the context of 75-B. So either you haven't</p> <p>20 done your research or you have and you still</p> <p>21 know that it's an improper question to ask</p> <p>22 this witness.</p> <p>23 MR. GRAFF: Right. I'm not asking the 12:46:23PM</p> <p>24 witness to interpret or opine. I asked if</p> <p>25 the witness had any information. To the</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 158	Page 159
<p>1 CYNTHIA DISTEFANO</p> <p>2 extent she knows about that, I'm asking that</p> <p>3 she express that now.</p> <p>4 MS. ZWILLING: Well, only an attorney 12:46:33PM</p> <p>5 could interpret this. And to the extent any</p> <p>6 attorney may have interpreted it for her,</p> <p>7 that's privileged.</p> <p>8 MR. NOVIKOFF: Do you want to call the 12:46:42PM</p> <p>9 judge up on this one or mark it for a</p> <p>10 ruling?</p> <p>11 MS. ZWILLING: And quite frankly, what 12:46:46PM</p> <p>12 her opinion of it may be is not going to</p> <p>13 help you in any way.</p> <p>14 MR. GRAFF: I didn't ask her for her 12:46:51PM</p> <p>15 opinion.</p> <p>16 BY MR. GRAFF: 12:46:54PM</p> <p>17 Q Have you had -- in the course of your 12:46:54PM</p> <p>18 employment in any of your positions in Suffolk</p> <p>19 County Civil Service, have you had any personal</p> <p>20 involvement in a situation applying that</p> <p>21 provision of 75B1?</p> <p>22 MR. NOVIKOFF: Objection. 12:47:09PM</p> <p>23 MS. ZWILLING: Objection. 12:47:12PM</p> <p>24 A No. 12:47:12PM</p> <p>25 Q Do you know whether any other employee 12:47:20PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 of Suffolk County Civil Service, specific</p> <p>3 individual, has been involved in issues</p> <p>4 involving the application of this provision?</p> <p>5 MR. NOVIKOFF: You're kidding me. 12:47:30PM</p> <p>6 MS. ZWILLING: Objection. 12:47:31PM</p> <p>7 MR. NOVIKOFF: Objection. 12:47:33PM</p> <p>8 MS. ZWILLING: The objection now is 12:47:34PM</p> <p>9 numerous, because you could -- your question</p> <p>10 also inquires whether there has been any</p> <p>11 whistle blowing incident within Civil</p> <p>12 Service, within Suffolk County, within</p> <p>13 multiple other jurisdictions within the</p> <p>14 county.</p> <p>15 MR. GRAFF: That's already the 12:47:51PM</p> <p>16 witness's testimony.</p> <p>17 MS. ZWILLING: I'm going to ask you to 12:47:54PM</p> <p>18 clarify the question because, as asked, I</p> <p>19 can't permit her to respond to it. I want</p> <p>20 to make clear I'm not foreclosing you</p> <p>21 entirely from this avenue of inquiry. If</p> <p>22 you want to rephrase your question, perhaps</p> <p>23 you can put it together in some permissible</p> <p>24 fashion.</p> <p>25 MR. GRAFF: Okay. 12:48:14PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 160	Page 161
<p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 12:48:14PM</p> <p>3 Q Earlier you had made reference to some 12:48:14PM</p> <p>4 county issues regarding 75B. Do you recall what</p> <p>5 I'm referring to?</p> <p>6 A Yes. 12:48:22PM</p> <p>7 Q And do you recall anything specific 12:48:23PM</p> <p>8 about those issues that you referred to?</p> <p>9 MR. NOVIKOFF: Objection to form. 12:48:26PM</p> <p>10 A I know our department investigated one 12:48:29PM</p> <p>11 instance.</p> <p>12 Q Do you recall in substance what the 12:48:34PM</p> <p>13 incident involved?</p> <p>14 MS. ZWILLING: Objection. I 12:48:37PM</p> <p>15 absolutely cannot let the witness get into</p> <p>16 any whistle -- investigations of whistle</p> <p>17 blowing issues, particularly since she's</p> <p>18 testified that this relates to the county</p> <p>19 and not a municipality. There's an</p> <p>20 investigatory privilege there. We could be</p> <p>21 violating the rights of any number of people</p> <p>22 were we to give out that information.</p> <p>23 MR. GRAFF: Let's mark that. 12:48:58PM</p> <p>24 MR. NOVIKOFF: And I'm going to be 12:49:00PM</p> <p>25 making a motion for sanctions on this</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 question as well.</p> <p>3 MS. ZWILLING: I do want to make 12:49:07PM</p> <p>4 clear, Mr. Graff, that if for some reason</p> <p>5 you can have a particularized factual basis</p> <p>6 for asking that question which relates</p> <p>7 directly to the issues here, I might</p> <p>8 reevaluate that. But if you're just asking</p> <p>9 to find out what else is out there, I</p> <p>10 obviously have to instruct the witness not</p> <p>11 to answer because, among other things, I</p> <p>12 can't allow her to give that information</p> <p>13 that we may be breaking the law by giving.</p> <p>14 MR. GRAFF: Let's just mark that. I 12:49:32PM</p> <p>15 don't agree with your position, but I'll</p> <p>16 move on.</p> <p>17 MS. ZWILLING: Okay. Thank you. 12:49:36PM</p> <p>18 BY MR. GRAFF: 12:49:37PM</p> <p>19 Q Do you know who in the department -- 12:49:38PM</p> <p>20 and I'm not asking by name, what position the</p> <p>21 person who led that investigation that you</p> <p>22 referred to involving Section 75B, who that was?</p> <p>23 A Yes. 12:49:51PM</p> <p>24 Q And who was it? 12:49:51PM</p> <p>25 A Name or title? 12:49:55PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 162	Page 163
<p>1 CYNTHIA DISTEFANO</p> <p>2 MR. GRAFF: Do you have an objection 12:49:58PM</p> <p>3 to the name?</p> <p>4 MS. ZWILLING: Only that bit of 12:50:00PM</p> <p>5 information, no. But I'm obviously going to</p> <p>6 parse the questions here because I have to</p> <p>7 be careful that nothing is going to be</p> <p>8 disclosed in terms of anybody's privacy or</p> <p>9 other law of privilege.</p> <p>10 MR. GRAFF: Subject to my position, 12:50:15PM</p> <p>11 which is that those don't apply in a federal</p> <p>12 deposition, I will try to accommodate.</p> <p>13 MS. ZWILLING: I fully understand 12:50:21PM</p> <p>14 that, and I'm sure you're not interested in</p> <p>15 situations that are entirely unrelated. On</p> <p>16 the other hand, there obviously are</p> <p>17 constraints on our ability to give out</p> <p>18 information with respect to whistle blowing.</p> <p>19 If you want the name, she can give you just</p> <p>20 the name, yes.</p> <p>21 A Christine Chayes, C-H-A-Y-E-S. 12:50:37PM</p> <p>22 Q What position? 12:50:42PM</p> <p>23 A Principal personnel analyst. 12:50:44PM</p> <p>24 Q What year did that investigation 12:50:51PM</p> <p>25 commence?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: I'm going to object to 12:50:54PM</p> <p>3 any questions regarding the investigation</p> <p>4 itself at this time.</p> <p>5 MR. GRAFF: Can I get the time frame 12:51:02PM</p> <p>6 that we're talking about?</p> <p>7 MS. ZWILLING: I'm going to say no, 12:51:05PM</p> <p>8 because I don't know where that's going to</p> <p>9 lead.</p> <p>10 If you'd like during a break, I'm 12:51:10PM</p> <p>11 happy to speak with Ms. DiStefano. Possibly</p> <p>12 there's some information she might be able</p> <p>13 to share with me that we may be able, along</p> <p>14 with you, to make some evaluation of whether</p> <p>15 or not this is something that can be gone</p> <p>16 into.</p> <p>17 BY MR. GRAFF: 12:51:29PM</p> <p>18 Q Who did Christine Chayes report to at 12:51:29PM</p> <p>19 that time?</p> <p>20 A Alan Schneider. 12:51:33PM</p> <p>21 Q Was there anyone between Christine 12:51:35PM</p> <p>22 Chayes and Alan Schneider?</p> <p>23 A No. 12:51:40PM</p> <p>24 Q Do you know who Allison Sanchez is? 12:51:41PM</p> <p>25 A Yes. 12:51:43PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 164	Page 165
<p>1 CYNTHIA DISTEFANO</p> <p>2 Q And who do you know her to be? 12:51:44PM</p> <p>3 A She was a personnel analyst trainee 12:51:46PM</p> <p>4 and a personnel analyst in the Civil Service</p> <p>5 Department. She left us to go the probation</p> <p>6 department.</p> <p>7 Q And were you ever her direct or 12:51:58PM</p> <p>8 indirect supervisor?</p> <p>9 A Indirect, yes. 12:52:04PM</p> <p>10 Q What was the nature of that indirect 12:52:05PM</p> <p>11 supervisory relationship?</p> <p>12 A Through the chain on down through the 12:52:09PM</p> <p>13 principal personnel analyst, senior personnel</p> <p>14 analyst.</p> <p>15 Q Is that the extent of the chain? 12:52:15PM</p> <p>16 A Yes. 12:52:16PM</p> <p>17 Q Did you ever have occasion to 12:52:23PM</p> <p>18 supervise her work or any aspect of it directly?</p> <p>19 A I would call my supervision always 12:52:33PM</p> <p>20 indirect through the principal personnel</p> <p>21 analyst, but I was certainly involved in some of</p> <p>22 it, yes.</p> <p>23 Q Who were the principal personnel 12:52:41PM</p> <p>24 analysts who were the direct supervisors of</p> <p>25 Ms. Sanchez?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 A Phillip Cohen. 12:52:48PM</p> <p>3 Q Was he the only one? 12:52:48PM</p> <p>4 A Yes. 12:52:50PM</p> <p>5 Q Do you recall having any conversations 12:52:51PM</p> <p>6 with Phillip Cohen about Ms. Sanchez?</p> <p>7 MS. ZWILLING: Ever? 12:52:56PM</p> <p>8 MR. GRAFF: Yeah. 12:52:57PM</p> <p>9 A I had some conversations with all my 12:52:58PM</p> <p>10 supervisors about their employees.</p> <p>11 Q Do you recall any specific 12:53:02PM</p> <p>12 conversation between yourself and Mr. Cohen</p> <p>13 regarding Ms. Sanchez?</p> <p>14 A I recall several specific 12:53:10PM</p> <p>15 conversations.</p> <p>16 Q As far as you know, was Ms. Sanchez's 12:53:22PM</p> <p>17 performance as a personnel analyst or personnel</p> <p>18 analyst trainee satisfactory?</p> <p>19 A Yes. She successfully completed her 12:53:31PM</p> <p>20 training and became a personnel analyst.</p> <p>21 Q And as a personnel analyst, did she 12:53:37PM</p> <p>22 perform to the expectations of the Suffolk</p> <p>23 County Department of Civil Service?</p> <p>24 A Yes, she did. 12:53:43PM</p> <p>25 Q Were you aware any of disciplinary 12:53:44PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

1 CYNTHIA DISTEFANO
2 action taken against her?
3 A No. 12:53:48PM
4 MR. NOVIKOFF: Objection to form. 12:53:48PM
5 BY MR. GRAFF: 12:53:49PM
6 Q When I say disciplinary action, what 12:53:49PM
7 do you understand me to refer to, if anything?
8 A A formal disciplinary action within 12:53:57PM
9 the parameters established by Suffolk County.
10 Q Do you know why Ms. Sanchez left for 12:54:22PM
11 the probation department?
12 A She wanted a law enforcement position. 12:54:25PM
13 Q Do you recall whether any of your 12:54:29PM
14 conversations with Mr. Cohen concerning
15 Ms. Sanchez also related to the Incorporated
16 Village of Ocean Beach specifically?
17 A Yes, they did. 12:54:40PM
18 Q How many such conversations do you 12:54:47PM
19 recall having?
20 A I have no idea. 12:54:48PM
21 Q What was the substance of the most 12:54:52PM
22 recent conversation of that nature? The last
23 time that you can remember having spoken with
24 Mr. Cohen regarding Ms. Sanchez and the
25 Incorporated Village of Ocean Beach, what did
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1 CYNTHIA DISTEFANO
2 to resolve the problems.
3 Q And in sum and substance, what do you 12:56:04PM
4 recall being discussed about how the department
5 was moving forward on those problems?
6 A It was moving forward very well. 12:56:11PM
7 Q And did you discuss this general 12:56:16PM
8 subject with Mr. Cohen on more than one
9 occasion?
10 A Yes. 12:56:21PM
11 Q Over what period of time did those 12:56:21PM
12 conversations take place?
13 A I don't know. 12:56:29PM
14 Q Do you know what year, in what year 12:56:29PM
15 you first had a conversation with Mr. Cohen
16 regarding the Incorporated Village of Ocean
17 Beach?
18 A No. 12:56:37PM
19 Q Do you recall whether you had such a 12:56:40PM
20 conversation before Ms. Sanchez was employed in
21 Suffolk County Civil Service?
22 A I'm sure I did. 12:56:49PM
23 Q And in substance, what did you discuss 12:56:55PM
24 with Mr. Cohen at that time, prior to
25 Ms. Sanchez's employment?
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1 CYNTHIA DISTEFANO
2 you discuss?
3 A I would say yesterday, in preparation 12:55:14PM
4 for this, we were looking through paperwork.
5 Q We'll come back to that. 12:55:20PM
6 What about during the period when 12:55:21PM
7 Ms. Sanchez was actively actually employed as a
8 personnel analyst?
9 MR. NOVIKOFF: What about it? Is that 12:55:30PM
10 a question or was the a preface to a
11 question?
12 MR. GRAFF: Taking a breath. It's a 12:55:34PM
13 preface.
14 BY MR. GRAFF: 12:55:36PM
15 Q Did you have any conversations with 12:55:36PM
16 Mr. Cohen concerning Ms. Sanchez and the
17 Incorporated Village of Ocean Beach that you can
18 recall during that period?
19 A We had conversations about the general 12:55:45PM
20 employment status of people in the Village of
21 Ocean Beach.
22 Q And was that people generally or 12:55:52PM
23 specific people in Ocean Beach?
24 A People who were perhaps not in 12:55:56PM
25 approved status and how we were moving forward
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1 CYNTHIA DISTEFANO
2 A I review all of the disapproved 12:57:02PM
3 employment in various jurisdictions regularly,
4 and I discuss with the analysts and the
5 supervisors responsible for that jurisdiction
6 what the situations are and how we're
7 progressing in resolving them.
8 Q And at the time when you discussed 12:57:22PM
9 that with Mr. Cohen before Ms. Sanchez was
10 employed, what was the status of the county's
11 actions regarding Ocean Beach reporting?
12 MS. ZWILLING: Objection as to form. 12:57:35PM
13 Status as --
14 MR. GRAFF: I may have missed a 12:57:38PM
15 question.
16 BY MR. GRAFF: 12:57:40PM
17 Q At the time when you discussed that 12:57:40PM
18 with Mr. Cohen before Ms. Sanchez was employed,
19 were there problems with reporting and
20 certification? Was that a subject of your
21 conversation as to Ocean Beach?
22 MR. NOVIKOFF: Objection to form. 12:57:57PM
23 A Anything that resulted in an 12:57:58PM
24 employee's status being disapproved was the
25 subject of the conversation.
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<p style="text-align: right;">Page 170</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q And was the county's efforts to remedy 12:58:06PM</p> <p>3 the basis for those disapprovals something that</p> <p>4 you discussed with Mr. Cohen?</p> <p>5 A Yes. 12:58:14PM</p> <p>6 Q And what was the status of those 12:58:14PM</p> <p>7 efforts at the time that you discussed it with</p> <p>8 Mr. Cohen before Ms. Sanchez was employed?</p> <p>9 A I just looked that we are on top of 12:58:22PM</p> <p>10 it, that we have contacted whoever the</p> <p>11 jurisdiction is, in this case, the village, and</p> <p>12 told them what they need to do and remind them</p> <p>13 if they haven't done it.</p> <p>14 Q And again, I'm at the period before 12:58:33PM</p> <p>15 Ms. Sanchez started working. What was the</p> <p>16 outcome of these efforts to correct the basis</p> <p>17 for the disapprovals in Ocean Beach?</p> <p>18 MR. NOVIKOFF: Objection. I don't 12:58:47PM</p> <p>19 know if you laid a foundation that an</p> <p>20 outcome came into being before Ms. Sanchez</p> <p>21 was hired.</p> <p>22 A It's an ongoing process. 12:58:55PM</p> <p>23 Q Correct me, please, if I'm misstating. 12:59:05PM</p> <p>24 I believe you said you would contact Ocean</p> <p>25 Beach, remind them what they need to do to try</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 171</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 to correct the problem?</p> <p>3 A The analyst would normally do that. 12:59:14PM</p> <p>4 Q If that is not sufficient to correct 12:59:16PM</p> <p>5 the problem, is there another -- anything else</p> <p>6 that Suffolk County Civil Service could have</p> <p>7 done to pursue the correction of that problem?</p> <p>8 MR. NOVIKOFF: Objection to form on 12:59:30PM</p> <p>9 multiple levels.</p> <p>10 MS. ZWILLING: Objection. 12:59:32PM</p> <p>11 You can answer. 12:59:35PM</p> <p>12 A We send letters. We make telephone 12:59:36PM</p> <p>13 contacts. We arrange meetings.</p> <p>14 Q And what actions beyond calling and 12:59:49PM</p> <p>15 reminding them has Suffolk County -- did Suffolk</p> <p>16 County take prior to the year 2000 to correct</p> <p>17 the basis for the disapprovals in Ocean Beach?</p> <p>18 A I don't remember anything out the 1:00:01PM</p> <p>19 ordinary.</p> <p>20 MR. NOVIKOFF: And I'm going to object 1:00:03PM</p> <p>21 to the form of the question. You asked her</p> <p>22 a general question, the question previously,</p> <p>23 and then you took what her answer was and</p> <p>24 applied it to Ocean Beach, and there was no</p> <p>25 foundation that the activities that this</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 172</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 witness discussed generally they did with</p> <p>3 regard to Ocean Beach.</p> <p>4 MR. GRAFF: That's my question now. 1:00:21PM</p> <p>5 BY MR. GRAFF: 1:00:22PM</p> <p>6 Q Of those activities that you described 1:00:22PM</p> <p>7 generally, what, if any, of those activities did</p> <p>8 the county undertake with respect to Ocean Beach</p> <p>9 prior to the year 2000?</p> <p>10 MS. ZWILLING: The county? I don't 1:00:33PM</p> <p>11 think the county did anything.</p> <p>12 MR. GRAFF: Department of Civil 1:00:37PM</p> <p>13 Service.</p> <p>14 A The Department of Civil Service sends 1:00:38PM</p> <p>15 letters. We ask for payrolls if we don't have</p> <p>16 them. Specifically, I don't know what and when</p> <p>17 for Ocean Beach. So don't waste my time and</p> <p>18 yours asking me that.</p> <p>19 MS. ZWILLING: She's not going to know 1:00:54PM</p> <p>20 the specifics. You do have some documents</p> <p>21 which have been provided which might reflect</p> <p>22 various actions. You already questioned</p> <p>23 Allison Sanchez on them.</p> <p>24 MR. GRAFF: I'm asking about an 1:01:05PM</p> <p>25 earlier period of time.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 173</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: She's told you, she's 1:01:08PM</p> <p>3 not going to know the specifics.</p> <p>4 BY MR. GRAFF: 1:01:11PM</p> <p>5 Q Have you at any point yourself made 1:01:11PM</p> <p>6 any phone calls or participated in any meetings</p> <p>7 with any representative of Ocean Beach --</p> <p>8 MR. NOVIKOFF: Objection. Compound. 1:01:23PM</p> <p>9 BY MR. GRAFF: 1:01:24PM</p> <p>10 Q -- in connection with efforts to 1:01:25PM</p> <p>11 remedy the basis for disapprovals?</p> <p>12 MR. NOVIKOFF: Objection. I don't 1:01:40PM</p> <p>13 even know if that's what she said the</p> <p>14 problem at Ocean Beach was.</p> <p>15 A During what time frame? 1:01:44PM</p> <p>16 Q Ever. 1:01:46PM</p> <p>17 MS. ZWILLING: That's very broad and 1:01:48PM</p> <p>18 may relate to things and persons not</p> <p>19 involved in this case.</p> <p>20 BY MR. GRAFF: 1:01:52PM</p> <p>21 Q In the last -- have you been involved 1:01:53PM</p> <p>22 in what I described on more than one occasion?</p> <p>23 MR. NOVIKOFF: "Involved" is very 1:02:04PM</p> <p>24 broad.</p> <p>25 MR. GRAFF: Has she made phone calls 1:02:07PM</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

Page 174	Page 175
<p>1 CYNTHIA DISTEFANO</p> <p>2 herself or participated in meetings herself</p> <p>3 with a representative of Ocean Beach as part</p> <p>4 of efforts to correct the basis for</p> <p>5 disapprovals on multiple occasions.</p> <p>6 MR. NOVIKOFF: Objection to form. 1:02:19PM</p> <p>7 A Not on multiple occasions, no. 1:02:21PM</p> <p>8 Q When was the occasion when you did 1:02:24PM</p> <p>9 make such a telephone call or participate in</p> <p>10 such a meeting?</p> <p>11 MR. NOVIKOFF: Objection to form. 1:02:31PM</p> <p>12 A I was at one meeting in 2007 or '8. 1:02:32PM</p> <p>13 I'd have to look.</p> <p>14 Q Where was that meeting held? 1:02:42PM</p> <p>15 A In our department. 1:02:44PM</p> <p>16 Q And who was present for that meeting? 1:02:45PM</p> <p>17 A The mayor, Mayor Loeffler. 1:02:47PM</p> <p>18 Q Was anyone other than yourself and 1:02:50PM</p> <p>19 Mayor Loeffler present?</p> <p>20 A And Alan Schneider and their village's 1:02:54PM</p> <p>21 attorney.</p> <p>22 Q Was anyone else present? 1:03:00PM</p> <p>23 A No. 1:03:02PM</p> <p>24 Q Was there an attorney from the county? 1:03:02PM</p> <p>25 A No, not at that one. 1:03:05PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 Q And why was that meeting held at that 1:03:08PM</p> <p>3 time?</p> <p>4 MS. ZWILLING: Objection. She may not 1:03:10PM</p> <p>5 know. You haven't established that she or</p> <p>6 anyone at Civil Service requested the</p> <p>7 meeting.</p> <p>8 MR. NOVIKOFF: Exactly. 1:03:17PM</p> <p>9 BY MR. GRAFF: 1:03:18PM</p> <p>10 Q Do you know why that meeting took 1:03:18PM</p> <p>11 place at that time?</p> <p>12 A The village requested it. 1:03:21PM</p> <p>13 Q And do you know why the village 1:03:24PM</p> <p>14 requested it?</p> <p>15 MS. ZWILLING: Objection. You can ask 1:03:27PM</p> <p>16 if they communicated the reason to her.</p> <p>17 BY MR. GRAFF: 1:03:30PM</p> <p>18 Q Was it communicated to you why the 1:03:31PM</p> <p>19 village requested the meeting at that time?</p> <p>20 A Yes. 1:03:34PM</p> <p>21 Q Who communicated that to you? 1:03:35PM</p> <p>22 A I don't know. 1:03:44PM</p> <p>23 Q And what was communicated to you as 1:03:45PM</p> <p>24 far as the reason for holding the meeting?</p> <p>25 A I know the village initiated the 1:03:49PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 176	Page 177
<p>1 CYNTHIA DISTEFANO</p> <p>2 request. Whether it went to Alan Schneider or</p> <p>3 came to me, I don't recall.</p> <p>4 Q And did anyone at some point 1:03:57PM</p> <p>5 communicate to you why the village had</p> <p>6 communicated to them that were requesting the</p> <p>7 meeting?</p> <p>8 A Yes. 1:04:03PM</p> <p>9 Q And what was communicated to you on 1:04:04PM</p> <p>10 that subject?</p> <p>11 A They were exploring the -- getting a 1:04:06PM</p> <p>12 supervisory police position.</p> <p>13 Q Do you recall anything more specific 1:04:17PM</p> <p>14 on that subject?</p> <p>15 A We told them what the Civil Service 1:04:23PM</p> <p>16 possibilities would be.</p> <p>17 Q Do you recall what those possibilities 1:04:29PM</p> <p>18 that you told them about were?</p> <p>19 A We could've given an open competitive 1:04:32PM</p> <p>20 sergeant's exam. They could've sought a</p> <p>21 transfer from another police department of a</p> <p>22 sergeant. They could've reinstated someone who</p> <p>23 had held sergeant status at some point.</p> <p>24 Q Do you know if the village ultimately 1:04:54PM</p> <p>25 did any of those things? Was it ever</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 communicated to you?</p> <p>3 A To my knowledge, they have not done 1:04:59PM</p> <p>4 that.</p> <p>5 Q And after that meeting, has Suffolk 1:05:01PM</p> <p>6 County Civil Service taken any further action</p> <p>7 with respect to the subject of the meeting?</p> <p>8 A Yes, we have. 1:05:10PM</p> <p>9 Q And what actions have been taken? 1:05:11PM</p> <p>10 A We have sent letters about the 1:05:14PM</p> <p>11 supervisory situation with the police</p> <p>12 department.</p> <p>13 Q How many such letters were sent? 1:05:19PM</p> <p>14 A I don't know. 1:05:21PM</p> <p>15 Q More than one? 1:05:21PM</p> <p>16 A I would think yes. 1:05:23PM</p> <p>17 Q More than five? 1:05:25PM</p> <p>18 A I don't know. 1:05:26PM</p> <p>19 Q Do you know who -- under whose name 1:05:28PM</p> <p>20 would've drafted and signed those letters to</p> <p>21 Ocean Beach?</p> <p>22 A No. I'd have to look. It would be 1:05:33PM</p> <p>23 the personnel analyst or the principal.</p> <p>24 Q When is the last time you personally 1:05:39PM</p> <p>25 obtained further information on the status of</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 178</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Ocean Beach's handling of that issue subsequent</p> <p>3 to the meeting?</p> <p>4 A I would think within the last few 1:05:52PM</p> <p>5 months.</p> <p>6 Q And do you recall what information it 1:05:56PM</p> <p>7 was that you became aware of at that time?</p> <p>8 A That was a letter that we sent. 1:06:01PM</p> <p>9 Q Do you know who that letter was 1:06:05PM</p> <p>10 addressed to?</p> <p>11 A No. 1:06:08PM</p> <p>12 Q And so it's clear, was the issue that 1:06:11PM</p> <p>13 Ocean Beach was employing a sergeant without</p> <p>14 going through one of the possibilities that you</p> <p>15 had proposed as being consistent with Civil</p> <p>16 Service guidelines?</p> <p>17 MS. ZWILLING: Objection. 1:06:27PM</p> <p>18 MR. NOVIKOFF: Objection to the form. 1:06:29PM</p> <p>19 MS. ZWILLING: If he didn't go through 1:06:30PM</p> <p>20 the procedures, then he wasn't a sergeant.</p> <p>21 MR. GRAFF: I just want to be clear 1:06:34PM</p> <p>22 that they weren't considering hiring a</p> <p>23 sergeant and never did, but that there was a</p> <p>24 sergeant who was hired and they needed to</p> <p>25 correct that.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 179</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MR. CONNOLLY: Why don't we use the 1:06:42PM</p> <p>3 term working out of title.</p> <p>4 MR. NOVIKOFF: Why not ask the witness 1:06:45PM</p> <p>5 what was the subject matter of the letter</p> <p>6 that was sent to the village.</p> <p>7 BY MR. GRAFF: 1:06:51PM</p> <p>8 Q Do you know? 1:06:51PM</p> <p>9 A I don't know specifically how he 1:06:53PM</p> <p>10 worded it, so I'm not prepared to respond to</p> <p>11 that.</p> <p>12 Q Do you know if generally it was on the 1:06:59PM</p> <p>13 subject of an individual working out of title as</p> <p>14 a sergeant?</p> <p>15 A I don't know whether it was specific 1:07:06PM</p> <p>16 to an individual or whether it was specific to</p> <p>17 the supervisory situation.</p> <p>18 MR. NOVIKOFF: Why don't you ask her 1:07:14PM</p> <p>19 if it was about George Hesse.</p> <p>20 MR. GRAFF: If she doesn't know if 1:07:17PM</p> <p>21 it's an individual, I don't need that</p> <p>22 question.</p> <p>23 BY MR. GRAFF: 1:07:21PM</p> <p>24 Q At the time of the actual in-person 1:07:22PM</p> <p>25 meeting, was there discussion about any specific</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 180</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 individual?</p> <p>3 A There must have been. 1:07:41PM</p> <p>4 Q Do you recall who that individual was? 1:07:43PM</p> <p>5 A It would've been George Hesse. 1:07:44PM</p> <p>6 Q Were there any other specific 1:07:51PM</p> <p>7 employees of Ocean Beach who were discussed in</p> <p>8 that meeting with respect to Civil Service</p> <p>9 status?</p> <p>10 A No. 1:07:58PM</p> <p>11 Q During that meeting, did -- 1:08:04PM</p> <p>12 MR. NOVIKOFF: The meeting with 1:08:12PM</p> <p>13 Loeffler?</p> <p>14 MR. GRAFF: The meeting with Loeffler. 1:08:14PM</p> <p>15 BY MR. GRAFF: 1:08:15PM</p> <p>16 Q In the meeting with Loeffler, did you 1:08:15PM</p> <p>17 or Mr. Schneider or anyone else on behalf of</p> <p>18 Suffolk County Civil Service communicate to the</p> <p>19 representatives from Ocean Beach that there</p> <p>20 would be any consequences if they did not</p> <p>21 correct the out of title issue with George</p> <p>22 Hesse?</p> <p>23 MS. ZWILLING: Objection. 1:08:33PM</p> <p>24 MR. NOVIKOFF: Objection to form. 1:08:34PM</p> <p>25 MS. ZWILLING: There has been no 1:08:35PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 181</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 foundation that George Hesse was, in fact on</p> <p>3 duty working out of title at the time of the</p> <p>4 meeting.</p> <p>5 BY MR. GRAFF: 1:08:46PM</p> <p>6 Q Do you know whether George Hesse was 1:08:46PM</p> <p>7 working out of title at the time of the meeting?</p> <p>8 A No. 1:08:51PM</p> <p>9 Q No, he was not or no, you don't know? 1:08:52PM</p> <p>10 A I don't know at that specific moment. 1:08:55PM</p> <p>11 Q Do you know whether he's working out 1:08:58PM</p> <p>12 of title today?</p> <p>13 A Do I know? 1:09:02PM</p> <p>14 MR. NOVIKOFF: Does the witness have 1:09:06PM</p> <p>15 personal knowledge? Is that the question?</p> <p>16 BY MR. GRAFF: 1:09:11PM</p> <p>17 Q To the best of your knowledge and 1:09:11PM</p> <p>18 information, is George Hesse working out of</p> <p>19 title today?</p> <p>20 A Yes. 1:09:17PM</p> <p>21 Q As far as you know, has anybody from 1:09:25PM</p> <p>22 Suffolk County Civil Service ever communicated</p> <p>23 to any representative of Ocean Beach that there</p> <p>24 would be any consequences for employing Sergeant</p> <p>25 Hesse out of title and not correcting the</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 182</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 problem as guided by Civil Service Department?</p> <p>3 MS. ZWILLING: Objection. Your 1:09:48PM</p> <p>4 question presumes that there are</p> <p>5 consequences that Civil Service can impose</p> <p>6 for that.</p> <p>7 MR. GRAFF: I'm asking not that Civil 1:09:55PM</p> <p>8 Service would impose consequences, but that</p> <p>9 there were any consequences that could</p> <p>10 ensue.</p> <p>11 MS. ZWILLING: There are lots of 1:10:02PM</p> <p>12 consequences, but it may have nothing to do</p> <p>13 with Civil Service at all.</p> <p>14 MR. GRAFF: I'm asking if Civil 1:10:06PM</p> <p>15 Service communicated any such consequences.</p> <p>16 MS. ZWILLING: Why would they 1:10:09PM</p> <p>17 communicate those things? Like a taxpayer</p> <p>18 suit by people in the village or that the</p> <p>19 state could come in and do something about</p> <p>20 it? They may not even be aware of those</p> <p>21 things. If you want to ask are there</p> <p>22 consequences that Civil Service can impose</p> <p>23 and was that communicated, those questions</p> <p>24 are certainly proper. They can't speculate</p> <p>25 as to what other parties may or may not</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 183</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 choose to do.</p> <p>3 MR. NOVIKOFF: And I'm going to object 1:10:34PM</p> <p>4 again on the grounds that this is palpably</p> <p>5 and grossly irrelevant. You are asking this</p> <p>6 witness a question about an observation of</p> <p>7 whether or not Mr. Hesse is out of title in</p> <p>8 2007, which is after --</p> <p>9 MR. GRAFF: No, I asked at any point. 1:10:50PM</p> <p>10 MR. NOVIKOFF: Oh, no. I thought you 1:10:52PM</p> <p>11 were referring to information and belief</p> <p>12 concerning this 2007 meeting.</p> <p>13 MR. GRAFF: She wasn't sure if he was 1:10:58PM</p> <p>14 working out of title at that time. So I</p> <p>15 expanded the time to any time.</p> <p>16 MR. NOVIKOFF: I didn't quite get 1:11:05PM</p> <p>17 that. Okay, then fine. Still no relevancy</p> <p>18 of it to the lawsuit, but I don't think, if</p> <p>19 it's before 2006 it's grossly improper.</p> <p>20 MS. ZWILLING: May I ask you just 1:11:14PM</p> <p>21 this? Why don't you ask the witness if</p> <p>22 there are consequences that Civil Service</p> <p>23 can impose, if they communicated that to the</p> <p>24 village, and if you want to separately ask</p> <p>25 if they communicated to the village whether</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 184</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 there were other consequences not to be</p> <p>3 imposed by them.</p> <p>4 MR. GRAFF: I think that my original 1:11:36PM</p> <p>5 question was permissible. But to avoid</p> <p>6 colloquy, I'm going to proceed as you</p> <p>7 suggested.</p> <p>8 MS. ZWILLING: I appreciate that. 1:11:42PM</p> <p>9 Thank you.</p> <p>10 MR. NOVIKOFF: Or, more simply, what 1:11:43PM</p> <p>11 can the Civil Service Department --</p> <p>12 MR. GRAFF: Your suggestion is not 1:11:49PM</p> <p>13 appreciated.</p> <p>14 MR. NOVIKOFF: I think the simpler 1:11:49PM</p> <p>15 question is what, if anything, can the Civil</p> <p>16 Service Department do to enforce any</p> <p>17 violations of the Civil Service law.</p> <p>18 MR. GRAFF: You can ask that question 1:11:56PM</p> <p>19 when I'm done with my questions.</p> <p>20 MR. NOVIKOFF: Okay. Just trying to 1:11:59PM</p> <p>21 help you out, Arie.</p> <p>22 BY MR. GRAFF: 1:12:02PM</p> <p>23 Q Was it after communicated to Ocean 1:12:02PM</p> <p>24 Beach that there were any consequences that</p> <p>25 Civil Service could impose for continued</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 185</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 employment of sergeant --</p> <p>3 MS. ZWILLING: I request that you 1:12:19PM</p> <p>4 first ask whether there are consequences.</p> <p>5 BY MR. GRAFF: 1:12:22PM</p> <p>6 Q Are there consequences that Civil 1:12:23PM</p> <p>7 Service can impose on a municipality for</p> <p>8 continuing to employ someone out of title?</p> <p>9 MR. NOVIKOFF: Wasn't that my 1:12:31PM</p> <p>10 question?</p> <p>11 A Yes, there are. 1:12:32PM</p> <p>12 Q What are those consequences? 1:12:33PM</p> <p>13 A We could initiate a lawsuit. We have 1:12:35PM</p> <p>14 not done that. A cease and desist of some sort</p> <p>15 via the county attorney's office.</p> <p>16 Q Has Suffolk County Department of Civil 1:12:48PM</p> <p>17 Service in the last approximately 10 years</p> <p>18 initiated such a lawsuit against any</p> <p>19 municipality?</p> <p>20 A Not to my knowledge. 1:12:56PM</p> <p>21 Q What about during the entire span of 1:12:57PM</p> <p>22 your employment with the county?</p> <p>23 A Not to my knowledge. 1:13:00PM</p> <p>24 Q Other than initiating a lawsuit, are 1:13:02PM</p> <p>25 there any other consequences that Suffolk County</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

1 **CYNTHIA DISTEFANO**
2 **could impose?**
3 MS. ZWILLING: Objection with respect 1:13:07PM
4 to your use of the term "Suffolk County."
5 MR. GRAFF: Suffolk County Civil 1:13:14PM
6 Service.
7 A We remind people of the sections of 1:13:15PM
8 Civil Service law that make it a misdemeanor to
9 pay someone not properly certified, but that's
10 not something that we pursue. It's something
11 that a taxpayer could pursue. We remind them
12 that it could be a personal liability on their
13 part for the salary of people illegally
14 employed.
15 **Q In the context of Ocean Beach, 1:13:44PM**
16 **incorporated village of, you had testified**
17 **earlier that the village clerk and the mayor and**
18 **board of trustees were appointing authorities;**
19 **is that correct?**
20 MR. NOVIKOFF: Objection to form. 1:13:59PM
21 A No, I don't think the trustees are. I 1:14:00PM
22 think it's the village clerk and the mayor.
23 **Q When you stated a moment ago that it 1:14:04PM**
24 **could be a personal liability for monies paid to**
25 **the employee working out of title, who would**
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1 **CYNTHIA DISTEFANO**
2 MS. ZWILLING: And again, there's been 1:15:01PM
3 no testimony that at the time of the meeting
4 that George Hesse was in fact working out of
5 title. I don't think there's any dispute
6 that at some point he was, but we may not
7 have that timing here.
8 MR. GRAFF: She wasn't sure if he was 1:15:13PM
9 or wasn't. Now I'm asking was it
10 communicated to them at all at this meeting.
11 A This was not a threatening meeting. 1:15:20PM
12 This was a working meeting to solve a problem.
13 And after that meeting, they did hire a
14 temporary for the summer and he has left. So we
15 were not making threats at that meeting.
16 **Q And now that it's been determined that 1:15:36PM**
17 **George Hesse is currently working out of title,**
18 **has it been communicated, as far as you know, to**
19 **anyone at Ocean Beach that any of those**
20 **consequences could potentially ensue?**
21 MS. ZWILLING: Objection. 1:15:50PM
22 MR. NOVIKOFF: Objection. 1:15:51PM
23 MS. ZWILLING: Who has determined 1:15:51PM
24 that George Hesse is --
25 MR. GRAFF: She answered that he was. 1:15:53PM
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1 **CYNTHIA DISTEFANO**
2 **potentially be personally liable?**
3 MR. NOVIKOFF: Objection. Calls for a 1:14:18PM
4 legal conclusion.
5 A I'm not an attorney. 1:14:20PM
6 **Q To the extent that you know based on 1:14:22PM**
7 **your experience with Civil Service issues, can**
8 **you answer the question?**
9 MR. NOVIKOFF: Same problem. 1:14:28PM
10 A It's not a Civil Service issue in that 1:14:29PM
11 regard.
12 MS. ZWILLING: It's in McKinney 1:14:35PM
13 somewhere. I think we can all agree on
14 that.
15 MR. GRAFF: Yeah. 1:14:38PM
16 BY MR. GRAFF: 1:14:39PM
17 **Q During the meeting with the 1:14:40PM**
18 **representatives of Ocean Beach, was it**
19 **communicated at that time that it could be a**
20 **misdemeanor or there could be personal liability**
21 **or Civil Service could potentially initiate a**
22 **lawsuit?**
23 MR. NOVIKOFF: Objection to form. You 1:14:59PM
24 said meetings. The witness has only
25 testified to one meeting.
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1 **CYNTHIA DISTEFANO**
2 MR. NOVIKOFF: No. 1:15:55PM
3 MS. ZWILLING: No. 1:15:56PM
4 MR. NOVIKOFF: You asked if she had 1:15:56PM
5 any knowledge based upon any information and
6 belief. That's different.
7 BY MR. GRAFF: 1:16:01PM
8 **Q Now that there is a basis of 1:16:02PM**
9 **information and belief that that is the case, in**
10 **light of that, as far as you know, has it been**
11 **communicated to anyone?**
12 MR. NOVIKOFF: Objection. 1:16:11PM
13 A As a threat? 1:16:11PM
14 MR. NOVIKOFF: Objection to form. 1:16:12PM
15 MS. ZWILLING: I'm going to object 1:16:13PM
16 too, but the witness can answer the
17 question.
18 A We sent a letter. As I said, before, 1:16:15PM
19 I don't recall the exact terminology of the
20 letter. I don't think we were citing
21 Section 100 or whatever as a consequence.
22 MS. ZWILLING: The letters have been 1:16:25PM
23 produced to you, by the way.
24 MR. GRAFF: Yeah, I know. I'll get to 1:16:29PM
25 those.
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<p style="text-align: right;">Page 190</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 (Whereupon, a discussion was held off 2:22:00PM</p> <p>3 the record.)</p> <p>4 (Whereupon, a lunch break was taken.) 2:22:00PM</p> <p>5 MR. GRAFF: Please mark this. 2:22:53PM</p> <p>6 (Whereupon, Signature authorization 2:22:54PM</p> <p>7 form dated March 7, 2003 was marked as</p> <p>8 DiStefano Exhibit 10 for identification, as</p> <p>9 of test date.)</p> <p>10 (Whereupon, Report of Personnel 2:24:20PM</p> <p>11 Changes was marked as DiStefano Exhibit 11</p> <p>12 for identification, as of this date.)</p> <p>13 BY MR. GRAFF: 2:25:34PM</p> <p>14 Q Ms. DiStefano, during the lunch 2:25:44PM</p> <p>15 recess, a moment ago, I asked the court reporter</p> <p>16 to mark a document as CD 10. It's a signature</p> <p>17 authorization form with two signature</p> <p>18 authorization forms copied onto the single page</p> <p>19 that you provided during the lunch break. I</p> <p>20 have just a couple of questions.</p> <p>21 In the bolded text that's in paragraph 2:26:05PM</p> <p>22 format the top, "I hereby certify that I have</p> <p>23 authorized the person listed below to sign</p> <p>24 official documents such as payrolls, duty</p> <p>25 statements and application for employment,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 191</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 personnel changes and requests for eligible</p> <p>3 lists for this jurisdiction for submission to</p> <p>4 the Suffolk County Department of Civil Service,"</p> <p>5 is this authorization a delegation by the</p> <p>6 authorizing party of the authority to sign as an</p> <p>7 appointing authority?</p> <p>8 MS. ZWILLING: Objection to form, to 2:26:41PM</p> <p>9 your use of the word "delegation." The</p> <p>10 question, as phrased, calls for legal</p> <p>11 conclusion. But I think if you rephrase the</p> <p>12 question, you'll get what you need without</p> <p>13 that.</p> <p>14 BY MR. GRAFF: 2:26:52PM</p> <p>15 Q Is this conferring authorization for 2:26:53PM</p> <p>16 the designated person to sign documents as the</p> <p>17 appointing authority on behalf of the village?</p> <p>18 A It's an authorization to sign just 2:27:04PM</p> <p>19 those documents that are listed in that bold</p> <p>20 type that pertain to reporting to Civil Service.</p> <p>21 Q I also have marked as CD 11 a one-page 2:27:13PM</p> <p>22 document produced by Ocean Beach with a Bates</p> <p>23 number in the middle of the document 267. At</p> <p>24 the bottom right-hand corner of CD 11, there's a</p> <p>25 box, signature of appointing authority, and it's</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 192</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 signed Maryann Minerva?</p> <p>3 A Yes. 2:27:38PM</p> <p>4 Q Is this a document that would have 2:27:38PM</p> <p>5 been signed by her pursuant to the signature</p> <p>6 authorization on the top half of CD 10?</p> <p>7 A Yes, personnel changes. 2:27:43PM</p> <p>8 Q Let's look specifically at CD 11. The 2:27:48PM</p> <p>9 text above the signature in the bottom right,</p> <p>10 "The above changes are hereby certified as being</p> <p>11 in accordance with Civil Service requirements."</p> <p>12 A Uh-huh. Yes. 2:27:59PM</p> <p>13 Q Does the Civil Service Department give 2:28:01PM</p> <p>14 any instruction or guidance to the appointing</p> <p>15 authority with respect to whether the changes</p> <p>16 are -- strike that. Let me start again.</p> <p>17 Does an appointing authority in Ocean 2:28:26PM</p> <p>18 Beach specifically receive any instruction or</p> <p>19 guidance from the Civil Service Department as to</p> <p>20 how to determine whether or not the changes that</p> <p>21 they certify in a form such as CD 11 are in</p> <p>22 accordance with Civil Service law?</p> <p>23 MR. NOVIKOFF: Objection. Form. 2:28:45PM</p> <p>24 A Yes. 2:28:46PM</p> <p>25 Q And in what manner is that guidance 2:28:48PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 193</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 conveyed?</p> <p>3 A When there's a new person going to 2:28:54PM</p> <p>4 handle their Civil Service transactions, we try</p> <p>5 to meet with them and explain. We provide them</p> <p>6 with a copy of the rules. We provide them with</p> <p>7 the information they need to make various kinds</p> <p>8 of appointments. And each time they send us</p> <p>9 something, if there's a problem, we speak with</p> <p>10 them, we address it with them. So it's an</p> <p>11 ongoing process and it's initial training.</p> <p>12 Q And who specifically has been 2:29:21PM</p> <p>13 responsible for the training, for conveying that</p> <p>14 to the appointing authority in Ocean Beach, the</p> <p>15 most recent time that such training or guidance</p> <p>16 was conveyed?</p> <p>17 MR. NOVIKOFF: Objection to form. 2:29:35PM</p> <p>18 A It's normally the analyst assigned to 2:29:36PM</p> <p>19 the jurisdiction.</p> <p>20 Q And the most recent time that the 2:29:40PM</p> <p>21 analyst assigned to the jurisdiction had to do</p> <p>22 that with respect to Ocean Beach, who was that</p> <p>23 analyst?</p> <p>24 A I don't know a specific instance, but 2:29:48PM</p> <p>25 it's Phillip Cohen who was specifically assigned</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 194

Page 195

1 CYNTHIA DISTEFANO
2 as our liaison with Ocean Beach at this time.
3 **Q And who was the liaison assigned prior 2:29:57PM**
4 **to Phillip Cohen, if anyone?**
5 A I can't remember if there was anybody 2:30:01PM
6 between Allison and Phillip.
7 **Q And do you know in particular whether 2:30:07PM**
8 **Phillip Cohen actually has had occasion to**
9 **provide training or guidance to the appointing**
10 **authority in Ocean Beach?**
11 MR. NOVIKOFF: Objection to form. You 2:30:19PM
12 never talked about training. You asked
13 about guidance.
14 MR. GRAFF: Instruction or guidance. 2:30:24PM
15 A Training is offered. Not every 2:30:25PM
16 jurisdiction avails itself of that. But the
17 guidance, as I said, is ongoing with any
18 problems that arise as these transactions come
19 through. I can't point to any specifics with
20 Ocean Beach.
21 **Q Turning back to CD 10, the top half is 2:30:41PM**
22 **a signature authorization dated March 7, 2003.**
23 **The bottom half is a signature authorization**
24 **dated July 19th, 2006. During the period from**
25 **March 7th, 2003 to July 19th, 2006, who was**
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Page 196

1 CYNTHIA DISTEFANO
2 2006?
3 **Q Yes. 2:31:58PM**
4 A This one, I had two copies for 2:32:04PM
5 March 7th 2003, and in my hurry to get them back
6 here, I may have copied -- missed the other copy
7 from March 7th that had Natalie Rogers'
8 signature on it, because obviously it should
9 have her signature in addition to just her name.
10 **Q Okay. 2:32:31PM**
11 A So presuming that's in order, it would 2:32:31PM
12 be one of the three signatures on there. Ethan
13 Repp, Nancy Balarezo or Natalie Rogers.
14 **Q And we had touched on this earlier 2:32:48PM**
15 **this morning. Are there any constraints on who**
16 **can be designated as an authorized alternative**
17 **who would be acceptable to Civil Service?**
18 A No. And it varies widely. It's 2:33:03PM
19 whoever the appointing authority decides to
20 offer that to.
21 **Q And can -- would Civil Service accept 2:33:09PM**
22 **a signature of anybody who has not been**
23 **authorized pursuant to a form like this?**
24 MR. NOVIKOFF: Objection to form. 2:33:19PM
25 A No. 2:33:20PM
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1 CYNTHIA DISTEFANO
2 **allowed in Ocean Beach to sign official**
3 **documents, such as CD 11, if you can determine**
4 **that from this document?**
5 MS. ZWILLING: Objection. 2:31:15PM
6 MR. NOVIKOFF: Objection to form. 2:31:16PM
7 MS. ZWILLING: Because this is the 2:31:17PM
8 Civil Service authorization. The village
9 may or may not have permitted individuals
10 authorized on here --
11 MR. GRAFF: I'm asking consistent with 2:31:25PM
12 Civil Service guidelines, regulations,
13 specifications, who from the perspective of
14 Civil Service --
15 MS. ZWILLING: Why don't you ask whose 2:31:33PM
16 signature would Civil Service accept.
17 MR. GRAFF: That's fine. 2:31:39PM
18 BY MR. GRAFF: 2:31:39PM
19 **Q Can you answer the question that way? 2:31:40PM**
20 A What were the time frames? 2:31:42PM
21 **Q From the date of the first 2:31:43PM**
22 **authorization to the second, whose signature**
23 **would Civil Service accept from Ocean Beach on**
24 **the items described in the paragraph above?**
25 A From March 7th, 2003 to July 18th, 2:31:54PM
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Page 197

1 CYNTHIA DISTEFANO
2 **Q Turning to CD 11. Have you seen this 2:33:23PM**
3 **specific document before?**
4 A I don't know. 2:33:31PM
5 **Q Is this the CS-150? 2:33:32PM**
6 A Yes. 2:33:36PM
7 **Q And that's the report of personnel 2:33:37PM**
8 **changes?**
9 A Yes. 2:33:39PM
10 **Q Could you explain what its function 2:33:40PM**
11 **is?**
12 A Its function is to report personnel 2:33:43PM
13 changes, any action that a jurisdiction takes in
14 regard to an employee, hiring, firing,
15 dismissals, resignations, leave of absence,
16 salary increases, anything that happens to that
17 employee.
18 **Q And can you determine from CD 11 what 2:33:58PM**
19 **personnel change was being reported?**
20 A Two salary increases. 2:34:03PM
21 **Q And is the salary listed in the column 2:34:07PM**
22 **headed "Salary" the salary post the increase?**
23 **Is this the new salary that's being reported?**
24 A Yes. 2:34:19PM
25 **Q And is there anything on the document 2:34:19PM**
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CYNTHIA DISTEFANO

that indicates what the salary had been prior to this increase?

A No. 2:34:26PM

Q Is there any guideline, specification, rule, regulation by Civil Service with respect to the time period within which a change needs to -- of this nature needs to be reported on a CS-150?

A We say within a reasonable time. As soon as possible. 2:34:48PM

Q Is there anything -- 2:34:55PM

A There's nothing specific. 2:34:57PM

Q As a matter of practice at the Department of Civil Service, is there an informal but more specific cutoff time?

A No. 2:35:06PM

Q At the bottom left corner of the document there is some writing in a box. Based on the form of the document, who would've been or what entity or position or individual would've been responsible for making the handwritten notations there?

A The analyst assigned to that jurisdiction. 2:35:33PM

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CYNTHIA DISTEFANO

Q And can you determine from the writings who that analyst was? 2:35:36PM

A Yes. 2:35:40PM

Q Who? 2:35:40PM

A Allison Chester. 2:35:40PM

Q And there's a box checked for "approved as noted." Does that refer to something noted on this form or is that, perhaps, a notation somewhere else?

A It should refer to what's noted on this form. In this case, there isn't anything noted on there. 2:35:51PM

Q So is there a reason why approved as noted would be checked instead of approved? 2:35:58PM

MR. NOVIKOFF: Objection to form. 2:36:06PM

A It's not specified. 2:36:07PM

Q Is there any reason why approved as noted would be checked if there wasn't a notation somewhere? 2:36:09PM

MR. NOVIKOFF: Objection. Form. 2:36:16PM

A There might have been. I can't put myself in Allison's place and know why she did that. 2:36:17PM

Q Okay. As a matter of personnel 2:36:22PM

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CYNTHIA DISTEFANO

analyst functions, is there any reason why a personnel analyst should -- consistent with the form and the way the form is filled out, is approved as noted something that would be in writing or could it also be something noted in a telephone conversation?

MR. NOVIKOFF: Objection. Form. 2:36:42PM

A There should be something noted on the 150 itself to explain why that box is checked. 2:36:43PM

Q And then at the top right of the document it says "date prepared 6-15-05." Underneath that, almost directly underneath there's a column that says "Effective Dates," and the two dates there are 6-1-05 and 6-1-05. As CF-150s are used at Civil Service, is there a reason why the CS-150 would be prepared after the effective date of the change?

MS. ZWILLING: Objection. 2:37:28PM

MR. NOVIKOFF: Objection to form. 2:37:29PM

MS. ZWILLING: Civil Service doesn't prepare these documents. 2:37:31PM

MR. GRAFF: I understand Civil Service doesn't prepare it. I'm asking whether Civil Service expects to receive these

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CYNTHIA DISTEFANO

documents in advance of an effective date or after an effective date.

A It varies. We don't expect. We just expect to get them. We don't expect to get them on a specific date. 2:37:45PM

Q And how does a personnel analyst, consistent with the expectations of the Department of Civil Service, make the determination as to whether the change is approved or disapproved? 2:37:57PM

MR. NOVIKOFF: Objection. Form. 2:38:14PM

MS. ZWILLING: Objection. That question calls for the subjective workings of someone's mind. If you want to ask her what the criteria are, that's would be acceptable. 2:38:15PM

BY MR. GRAFF: 2:38:26PM

Q Are there fixed criteria that are applied to determining whether to approve or disapprove a change noted on a CS-150? 2:38:26PM

A Civil Service law and Civil Service rules. 2:38:33PM

Q Are there any specific Civil Service laws or rules? 2:38:35PM

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Page 202	Page 203
<p>1 CYNTHIA DISTEFANO</p> <p>2 A There is a whole Civil Service book in 2:38:44PM</p> <p>3 McKinney's that refers to Civil Service rules.</p> <p>4 Q Maybe my question -- maybe I 2:38:49PM</p> <p>5 misunderstood.</p> <p>6 When it's checked off as approved, 2:38:55PM</p> <p>7 does that mean it's approved as being consistent</p> <p>8 with all of the Civil Service rules?</p> <p>9 A Yes, it does. Anything applicable to 2:39:01PM</p> <p>10 that particular action.</p> <p>11 Q And is there an investigation that 2:39:05PM</p> <p>12 provides the basis for making the determination</p> <p>13 that it's consistent?</p> <p>14 A That's what we do. 2:39:12PM</p> <p>15 Q And are there any criteria or 2:39:14PM</p> <p>16 guidelines for how a personnel analyst should</p> <p>17 carry out such an investigation?</p> <p>18 A The analyst should know the Civil 2:39:22PM</p> <p>19 Service law and the Civil Service rules</p> <p>20 applicable to employment. That is the function</p> <p>21 of our department.</p> <p>22 Q And if a personnel analyst has a 2:39:33PM</p> <p>23 question, is that something that they would</p> <p>24 address with the senior personnel analyst?</p> <p>25 MR. NOVIKOFF: Objection. 2:39:43PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 2:39:44PM</p> <p>3 Q The principal personnel analyst? 2:39:45PM</p> <p>4 Excuse me.</p> <p>5 MR. NOVIKOFF: Objection. 2:39:49PM</p> <p>6 A They could address it with anyone else 2:39:49PM</p> <p>7 in the unit if they had a question.</p> <p>8 Q So they could confer with another 2:39:54PM</p> <p>9 personnel analyst and figure it out among</p> <p>10 themselves?</p> <p>11 MR. NOVIKOFF: Objection. 2:40:00PM</p> <p>12 A Sometimes. 2:40:00PM</p> <p>13 Q Towards the top, there's again a 2:40:10PM</p> <p>14 couple of handwritten notations next to the</p> <p>15 printed change. Do those notations have any</p> <p>16 specific meaning in the context of a CS-150?</p> <p>17 A There is a clerical person who enters 2:40:20PM</p> <p>18 the actual transaction on the roster card, and</p> <p>19 there's an analyst who then checks the</p> <p>20 clerical's work and what the jurisdiction has</p> <p>21 reported. So one check is the clerical's and</p> <p>22 then the cross-check is the analyst's.</p> <p>23 Q And who was the clerical who would -- 2:40:39PM</p> <p>24 who had responsibility over the Village of Ocean</p> <p>25 Beach with respect to forms like these?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 204	Page 205
<p>1 CYNTHIA DISTEFANO</p> <p>2 A Not sure. 2:40:48PM</p> <p>3 Q Was there -- is there at any one time 2:40:49PM</p> <p>4 a designated clerical?</p> <p>5 A Yes, there's always a designated 2:40:54PM</p> <p>6 clerical.</p> <p>7 Q Do you know today who the designated 2:40:57PM</p> <p>8 clerical is for Ocean Beach?</p> <p>9 A No. 2:41:00PM</p> <p>10 Q Does the designated clerical report to 2:41:00PM</p> <p>11 the personnel analyst or is there an independent</p> <p>12 a chain of command?</p> <p>13 A There is a clerical supervisor. 2:41:08PM</p> <p>14 Q Who does the clerical supervisor 2:41:11PM</p> <p>15 report to?</p> <p>16 A Me. 2:41:14PM</p> <p>17 Q How many clerical positions of that 2:41:16PM</p> <p>18 nature are there today?</p> <p>19 A Nine. 2:41:20PM</p> <p>20 Q And did that number fluctuate at all 2:41:20PM</p> <p>21 between 2000 and the present?</p> <p>22 A Maybe by one. 2:41:26PM</p> <p>23 Q What are the requirements, if you 2:41:35PM</p> <p>24 know, for obtaining the position of clerical</p> <p>25 analyst in Suffolk County Civil Service?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 A There is no clerical analyst. There 2:41:43PM</p> <p>3 is a clerical support staff and there is a</p> <p>4 professional staff of analysts. The clericals</p> <p>5 do not make decisions about these things.</p> <p>6 Q In very, very small print at the 2:42:08PM</p> <p>7 bottom of the document, it says, "Prior edition</p> <p>8 may be used until supply is depleted." Is this</p> <p>9 form that we're looking at the current edition</p> <p>10 today?</p> <p>11 A Yes, it is. 2:42:24PM</p> <p>12 Q And do you know when the last revision 2:42:25PM</p> <p>13 to the CS-150 was made?</p> <p>14 A If you look at the teeny, tiny print 2:42:30PM</p> <p>15 to the far left, at the bottom you will see CS</p> <p>16 form 150 (1086).</p> <p>17 Q And that's October 1986? 2:42:41PM</p> <p>18 A That's usually what 1086 refers to, 2:42:44PM</p> <p>19 yes.</p> <p>20 Q Thank you. 2:42:49PM</p> <p>21 MR. NOVIKOFF: What date in October? 2:42:59PM</p> <p>22 MS. ZWILLING: I think every county 2:43:03PM</p> <p>23 form has the prior edition.</p> <p>24 BY MR. GRAFF: 2:43:11PM</p> <p>25 Q Ms. DiStefano, when the document -- 2:43:11PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

CYNTHIA DISTEFANO
when the personnel analyst fills out that the
document is approved, is that something that's
sometimes referred to as certifying the payroll?

A No. 2:43:22PM

Q Is there something in the context of 2:43:23PM
Civil Service known as certifying payroll?

A Yes. 2:43:28PM

Q Could you explain what that is, 2:43:28PM
please?

A The jurisdiction has to submit its 2:43:30PM
 payroll to us, and then we match the information
 on the payroll with what they have reported via
 these CS-150s that constitute the roster card
 for the employee; and if they don't match, then
 we cannot certify that item on the payroll.

Q And is the payroll like the printout 2:43:55PM
of the actual payments or is it a Civil Service
form that's submitted as the payroll?

A No. It comes from the jurisdiction, 2:44:04PM
 and that varies also. We would like to see an
 official payroll that's generated -- that
 generated the paychecks, but sometimes they --
 the tiny jurisdictions type us something.

Q And when it comes to certifying the 2:44:18PM
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CYNTHIA DISTEFANO
payroll, are there any other criteria other than
ensuring that the amounts paid match the amounts
that were approved on a CS-150?

MR. NOVIKOFF: Objection to form. 2:44:29PM

A The title has to match. The 2:44:30PM
 information on our roster has to be the same as
 they're carrying on their payroll.

Q And who -- what position in Civil 2:44:44PM
Service has the authority or responsibility to
certify a payroll when appropriate?

A The analyst reviews the payroll, and 2:44:54PM
 then it's stamped with Alan Schneider's
 signature.

Q And is it the same analyst who would 2:45:01PM
have responsibility for that jurisdiction's
CS-150?

A If that same analyst is still assigned 2:45:07PM
 to that jurisdiction at the time the payroll
 comes in, yes.

Q Is there any -- I'm trying to find the 2:45:13PM
best terms for it.

Is the process of certifying personnel 2:45:25PM
changes on the CS-150 and certifying payroll, is
there any built-in mechanism to have a

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CYNTHIA DISTEFANO
cross-check by another personnel analyst or more
senior position?

MR. NOVIKOFF: Objection to the phrase 2:45:48PM
 "built-in." I don't know what that means.

BY MR. GRAFF: 2:45:51PM

Q Is there an automatic cross-check that 2:45:52PM
would take place as part of the process?

A There are cross-checks during 2:45:55PM
 training.

Q That is when a personnel analyst is a 2:45:57PM
trainee?

A Yes. 2:46:00PM

Q And then after they become a permanent 2:46:02PM
personnel analyst, are there any automatic
cross-checks that would happen?

A Not automatic. There can be. 2:46:10PM

Q Are there any criteria pursuant to 2:46:12PM
which a cross-check would be initiated?

MR. NOVIKOFF: Objection. Form. 2:46:19PM

A I think common sense, knowing how the 2:46:23PM
 analyst works. Knowing how difficult that
 particular jurisdiction is.

Q And who would have the authority or 2:46:32PM
responsibility to initiate such a cross-check?

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CYNTHIA DISTEFANO

A Any supervisor. 2:46:39PM

Q So that could be a principal personnel 2:46:41PM
analyst. Are there any other categories of
supervisor that would --

A Senior personnel analyst or my 2:46:48PM
 position.

Q Are there any other positions in the 2:46:51PM
county?

A In the county? 2:46:54PM

Q I'm sorry, in the Civil Service 2:46:55PM
Department who would have the authority or
responsibility to initiate a cross-check like
that?

A The personnel director certainly 2:47:04PM
 could.

Q Are there any others? 2:47:06PM

A No. 2:47:07PM

Q Do personnel analysts receive annual 2:47:17PM
written performance reviews?

A No. 2:47:21PM

Q Do personnel analysts ever receive 2:47:22PM
written performance reviews?

MR. NOVIKOFF: Objection. In the 2:47:28PM
 history of the Civil Service Department?

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Page 210	Page 211
<p>1 CYNTHIA DISTEFANO</p> <p>2 A Only in conjunction with disciplinary 2:47:32PM</p> <p>3 actions.</p> <p>4 Q Are there any positions in the Civil 2:47:35PM</p> <p>5 Service Department for which annual performance</p> <p>6 reviews in writing are conducted?</p> <p>7 A No. 2:47:44PM</p> <p>8 Q Are there any positions in the Civil 2:47:45PM</p> <p>9 Service Department for which annual -- strike</p> <p>10 that.</p> <p>11 For which there would be written 2:47:51PM</p> <p>12 performance reviews other than in the context of</p> <p>13 discipline?</p> <p>14 A No. 2:47:57PM</p> <p>15 Q Let's take a step back on this. 2:48:17PM</p> <p>16 To your knowledge, who are the 2:48:24PM</p> <p>17 individual employees in Ocean Beach who have</p> <p>18 interacted with personnel analysts in the Civil</p> <p>19 Service Department with respect to Ocean Beach</p> <p>20 Civil Service issues?</p> <p>21 A Maryann Minerva and George Hesse. 2:48:42PM</p> <p>22 Q Are those -- 2:48:47PM</p> <p>23 A That's to my personal knowledge. 2:48:49PM</p> <p>24 Q And do you have any information as to 2:48:52PM</p> <p>25 other individuals who may have had such</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 interactions?</p> <p>3 MR. NOVIKOFF: Objection. 2:49:01PM</p> <p>4 MR. GRAFF: Personal knowledge, 2:49:04PM</p> <p>5 sometimes I'm not sure exactly what that</p> <p>6 refers to.</p> <p>7 MR. NOVIKOFF: Why don't you ask her 2:49:07PM</p> <p>8 the basis of her knowledge that Mr. Hesse</p> <p>9 and Ms. Minerva interacted.</p> <p>10 MR. GRAFF: Okay. 2:49:16PM</p> <p>11 A In speaking with the people who work 2:49:18PM</p> <p>12 with, I spoke with Maryann Minerva, I spoke with</p> <p>13 George Hesse. I've seen some of the</p> <p>14 correspondence.</p> <p>15 Q Based on those or other sources of 2:49:30PM</p> <p>16 information, have any other names been</p> <p>17 referenced that you can think of?</p> <p>18 A The mayor occasionally, but I don't 2:49:35PM</p> <p>19 know if he gets involved with the nitty-gritty.</p> <p>20 I would doubt it.</p> <p>21 Q What about Catherine Spies? 2:49:41PM</p> <p>22 A Don't know that name. 2:49:43PM</p> <p>23 Q What about Edward Paradiso? 2:49:45PM</p> <p>24 A He has been on leave for a long time, 2:49:47PM</p> <p>25 so I have not heard him mentioned in conjunction</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 212	Page 213
<p>1 CYNTHIA DISTEFANO</p> <p>2 with personnel issues.</p> <p>3 Q Did the Civil Service Department have 2:49:58PM</p> <p>4 any role or responsibilities at all in</p> <p>5 connection with Ed Paradiso being on leave?</p> <p>6 MR. NOVIKOFF: Objection. 2:50:10PM</p> <p>7 A I believe it's a comp case, so we 2:50:10PM</p> <p>8 would not have any involvement with that.</p> <p>9 Q Would Ed Paradiso's leave be something 2:50:15PM</p> <p>10 that would've been reported on a CS-150?</p> <p>11 A Workers' comp claims are not reported 2:50:21PM</p> <p>12 to us.</p> <p>13 Q When a person is on a workers' comp 2:50:28PM</p> <p>14 leave, do they still hold the position and</p> <p>15 permanent -- let me rephrase.</p> <p>16 In the context of a permanent 2:50:40PM</p> <p>17 competitive class position at Ocean Beach, does</p> <p>18 an employee who goes on a workers' comp leave,</p> <p>19 retain their rights and protections in that</p> <p>20 position?</p> <p>21 MS. ZWILLING: Objection. 2:50:53PM</p> <p>22 MR. NOVIKOFF: Objection to form. 2:50:54PM</p> <p>23 MS. ZWILLING: And I'm going to have 2:50:55PM</p> <p>24 to object to that on the basis that it calls</p> <p>25 for a legal conclusion. The problem with</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 the question is there may be lots of rights</p> <p>3 and interests in protection that go with the</p> <p>4 position, and this witness, not being an</p> <p>5 attorney, may not be familiar with the</p> <p>6 panoply of that. However, if you want to</p> <p>7 break it down with respect to specific</p> <p>8 aspects of the position, such as the title,</p> <p>9 permanent status, is salary repaid, do they</p> <p>10 maintain sick time or seniority, she may be</p> <p>11 able to answer with respect to individual</p> <p>12 aspects of the position. I would also</p> <p>13 imagine that the answer differs between</p> <p>14 aspects. So you would probably want to know</p> <p>15 the individual answers.</p> <p>16 MR. GRAFF: Okay. 2:51:43PM</p> <p>17 BY MR. GRAFF: 2:51:44PM</p> <p>18 Q Specifically on Ed Paradiso, if he's 2:51:44PM</p> <p>19 on a workers' comp leave, does he maintain his</p> <p>20 Civil Service title of police sergeant?</p> <p>21 A He would, because they don't report 2:51:53PM</p> <p>22 the leave to us. So if we looked at the roster</p> <p>23 card, he looks like an active police sergeant,</p> <p>24 so he maintains all his competitive rights.</p> <p>25 Q Does anything change with respect to 2:52:05PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 214	Page 215
<p>1 CYNTHIA DISTEFANO</p> <p>2 Civil Service status of Ed Paradiso as a result</p> <p>3 of his being on the workers' comp leave?</p> <p>4 A Not until an action taken by the 2:52:13PM</p> <p>5 village changes his status.</p> <p>6 Q As far as you know, between 2000 and 2:52:20PM</p> <p>7 2006, who were the individuals who had hire and</p> <p>8 fire authority with respect to police officers</p> <p>9 in Ocean Beach?</p> <p>10 A I would think it was the mayor. 2:52:35PM</p> <p>11 Q Would there be anyone else? 2:52:38PM</p> <p>12 A No. 2:52:39PM</p> <p>13 Q Would Ed Paradiso have hire and fire 2:52:40PM</p> <p>14 authority?</p> <p>15 A No. 2:52:44PM</p> <p>16 Q Would George Hesse have hire and fire 2:52:45PM</p> <p>17 authority?</p> <p>18 A No. 2:52:47PM</p> <p>19 MR. NOVIKOFF: And this is also under 2:52:50PM</p> <p>20 Civil Service law?</p> <p>21 MS. ZWILLING: Right. She can't speak 2:52:54PM</p> <p>22 to the internal workings --</p> <p>23 THE WITNESS: What the village did, I 2:52:58PM</p> <p>24 don't know, but the appointing authority for</p> <p>25 the village is the mayor.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 MR. NOVIKOFF: Nice try, though. 2:53:04PM</p> <p>3 BY MR. GRAFF: 2:53:09PM</p> <p>4 Q Does a person who's authorized as an 2:53:10PM</p> <p>5 alternative on a form like CD 10 have the hire</p> <p>6 or fire powers of the appointing authority?</p> <p>7 MS. ZWILLING: Objection. 2:53:21PM</p> <p>8 Arie, the question -- the hiring and 2:53:22PM</p> <p>9 firing authority is internal to the village.</p> <p>10 The documents relate to who can sign off on</p> <p>11 the report to Civil Service. That may or</p> <p>12 may not be the same person as the village</p> <p>13 authorizes to make its decision.</p> <p>14 MR. GRAFF: Okay. 2:53:40PM</p> <p>15 MS. ZWILLING: We don't have any 2:53:41PM</p> <p>16 control over who the village makes into a</p> <p>17 decision maker.</p> <p>18 BY MR. GRAFF: 2:53:48PM</p> <p>19 Q Other than requiring that a person who 2:53:49PM</p> <p>20 signs off on a form like this needs to be the</p> <p>21 appointing authority or an authorized</p> <p>22 alternative, are there any other Civil Service</p> <p>23 specifications, guidelines, rules, regulations</p> <p>24 that would bear on who has hire and fire</p> <p>25 authority in Ocean Beach for police officers?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 216	Page 217
<p>1 CYNTHIA DISTEFANO</p> <p>2 MR. NOVIKOFF: I'm going to object now 2:54:11PM</p> <p>3 to the form of the question.</p> <p>4 I would've thought the comments 2:54:13PM</p> <p>5 would've made it clear that the phrase</p> <p>6 "hiring and firing authority" is not</p> <p>7 necessarily appropriate in Civil Service</p> <p>8 context.</p> <p>9 MR. GRAFF: I'm asking if it is. 2:54:24PM</p> <p>10 MS. ZWILLING: The further issue with 2:54:26PM</p> <p>11 the question, Arie, if you want to ask if</p> <p>12 any of the Civil Service rules relate,</p> <p>13 certainly that's a proper question. Once</p> <p>14 you get into the Civil Service law, not only</p> <p>15 are you asking her for a legal</p> <p>16 interpretation, but there are aspects of</p> <p>17 that law which may bind the individual</p> <p>18 municipality but are outside of the</p> <p>19 jurisdiction of Civil Service to enforce.</p> <p>20 MR. GRAFF: I should clarify. Within 2:54:53PM</p> <p>21 the jurisdiction of Civil Service in Suffolk</p> <p>22 County to enforce.</p> <p>23 MS. ZWILLING: Well, then I'm going to 2:54:59PM</p> <p>24 ask you to limit it to the Civil Service</p> <p>25 rules as opposed to Civil Service law,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 because, again, the witness can't interpret</p> <p>3 Civil Service law.</p> <p>4 MR. GRAFF: Sure. 2:55:06PM</p> <p>5 MS. ZWILLING: If you want to ask her 2:55:06PM</p> <p>6 with respect to any sections of Civil</p> <p>7 Service law that Civil Service is enforcing,</p> <p>8 fine, but I can't allow her, obviously, to</p> <p>9 speak about what aspects of the Civil</p> <p>10 Service law may bind the village. She's not</p> <p>11 a witness who can give that testimony.</p> <p>12 MR. GRAFF: I understand what you're 2:55:26PM</p> <p>13 saying.</p> <p>14 MS. ZWILLING: It's a phrasing 2:55:30PM</p> <p>15 objection. If you split up the question,</p> <p>16 there's probably no objection.</p> <p>17 BY MR. GRAFF: 2:55:32PM</p> <p>18 Q The Civil Service rules that you 2:55:33PM</p> <p>19 provided me with a copy during lunch, is there a</p> <p>20 more formal title for that document?</p> <p>21 A No. That is the formal title. 2:55:42PM</p> <p>22 Q The civil Service rules? 2:55:43PM</p> <p>23 A Yes. 2:55:46PM</p> <p>24 Q Are there any Civil Service rules that 2:55:46PM</p> <p>25 bear on who has hire and fire authority with</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 218</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 respect to police officers in Ocean Beach?</p> <p>3 MR. NOVIKOFF: Objection to the form 2:55:58PM</p> <p>4 of the question.</p> <p>5 A I don't know if we define appointing 2:55:59PM</p> <p>6 authority in there, but that would be the only</p> <p>7 place if it's anywhere.</p> <p>8 Q What about in any Civil Service 2:56:06PM</p> <p>9 manuals?</p> <p>10 A We deal with appointing authorities. 2:56:09PM</p> <p>11 We don't list titles that that appointing</p> <p>12 authority can hire or fire.</p> <p>13 Q On CD 10, we don't even necessarily 2:56:25PM</p> <p>14 have to look, but if the context helps. The</p> <p>15 title of Nancy J. Balarezo is village</p> <p>16 clerk/treasurer.</p> <p>17 A Yes. 2:56:39PM</p> <p>18 Q Is the village clerk/treasurer a Civil 2:56:39PM</p> <p>19 Service classified -- classification for a</p> <p>20 position?</p> <p>21 A Yes, it is. 2:56:46PM</p> <p>22 Q And is there a Civil Service -- are 2:56:47PM</p> <p>23 there separate Civil Service a classifications</p> <p>24 for the position village clerk and treasurer or</p> <p>25 are those one single position?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 219</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A There are three titles, a village 2:56:59PM</p> <p>3 clerk, a village treasurer and a village</p> <p>4 clerk/treasurer. If a village opts to use the</p> <p>5 combined titles, they don't get to use the other</p> <p>6 two.</p> <p>7 Q I see. And are the combined titles, 2:57:12PM</p> <p>8 is that a combination of everything that would</p> <p>9 apply in the two separate titles?</p> <p>10 A Yes. It's a money saving. If they 2:57:20PM</p> <p>11 don't want to use two people, they can have one</p> <p>12 who combines two official functions.</p> <p>13 Q What about village administrator, is 2:57:29PM</p> <p>14 that a Civil Service classification?</p> <p>15 A Yes, it is. 2:57:34PM</p> <p>16 Q What are the duties of a village 2:57:35PM</p> <p>17 administrator?</p> <p>18 A It's the business manager for the 2:57:37PM</p> <p>19 village.</p> <p>20 Q Is there a Civil Service class -- 2:57:44PM</p> <p>21 withdrawn.</p> <p>22 MR. GRAFF: I'm going to ask the court 2:58:01PM</p> <p>23 reporter to please mark as Exhibit CD 12 a</p> <p>24 one-page document without Bates number.</p> <p>25 (Whereupon, Suffolk County Department 2:58:13PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 220</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 of Civil Service Certification of Eligibles</p> <p>3 was marked as DiStefano Exhibit 12 for</p> <p>4 identification, as of this date.)</p> <p>5 BY MR. GRAFF: 2:59:00PM</p> <p>6 Q Ms. DiStefano, if you could just let 2:59:01PM</p> <p>7 me know when you've had a chance to look it</p> <p>8 over. (Hanging.)</p> <p>9 A (Witness complies.) Okay, I've seen 2:59:08PM</p> <p>10 it. I've read it.</p> <p>11 Q Have you, prior to my handing it to 2:59:18PM</p> <p>12 you, seen this specific page before?</p> <p>13 A I don't know. 2:59:26PM</p> <p>14 Q Towards the top, there's sort of a box 2:59:33PM</p> <p>15 with text in capital letters.</p> <p>16 Do you see that? 2:59:38PM</p> <p>17 A Yes. 2:59:39PM</p> <p>18 Q At the line on top of it, right above 2:59:40PM</p> <p>19 that, there's a line that's also in capitals.</p> <p>20 The first thing it says there is "village list."</p> <p>21 A Yes. 2:59:48PM</p> <p>22 Q Does that mean something in particular 2:59:48PM</p> <p>23 in this context?</p> <p>24 A It means it's a residents list for the 2:59:55PM</p> <p>25 Village of Ocean Beach.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 221</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q And then over next to that is the word 3:00:02PM</p> <p>3 "permanent." Does that mean something in this</p> <p>4 context?</p> <p>5 A It's a permanent vacancy, not a 3:00:08PM</p> <p>6 contingent permanent vacancy.</p> <p>7 Q And then next to that it says "list 3:00:14PM</p> <p>8 not pre-canvassed." What does that mean in this</p> <p>9 context?</p> <p>10 A It means that the Civil Service 3:00:21PM</p> <p>11 Department did not do a canvass of the</p> <p>12 candidates before certifying the list to the</p> <p>13 village.</p> <p>14 Q And how does that relate to the text 3:00:29PM</p> <p>15 underneath that states, "The candidates listed</p> <p>16 below have been canvassed by the Department of</p> <p>17 Civil Service" and continues from there?</p> <p>18 A That would be applicable if it did not 3:00:44PM</p> <p>19 say right above that that the list had not been</p> <p>20 pre-canvassed.</p> <p>21 Q So that in this particular page, that 3:00:53PM</p> <p>22 text does not apply?</p> <p>23 A That's correct. 3:00:56PM</p> <p>24 Q And can you tell from this document 3:01:02PM</p> <p>25 what -- strike that.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 222</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 The names listed here, underneath each 3:01:15PM</p> <p>3 of them it looks like there's three asterisks,</p> <p>4 the word "pending item," three asterisks and</p> <p>5 then some more text. Do you see what I'm</p> <p>6 referring to?</p> <p>7 A Yes. 3:01:30PM</p> <p>8 Q Looking at the first one, Trosco, 3:01:30PM</p> <p>9 Paul, the pending are med, psych, agility and</p> <p>10 polygraph.</p> <p>11 A Yes. 3:01:42PM</p> <p>12 Q What does "pending" mean in this 3:01:42PM</p> <p>13 context?</p> <p>14 A It means that either haven't been 3:01:45PM</p> <p>15 completed or we haven't gotten the results yet.</p> <p>16 Q And on this certification of eligibles 3:01:50PM</p> <p>17 form, does the designation "pending item" have</p> <p>18 any impact on whether the village can hire the</p> <p>19 individual for whom an item is pending?</p> <p>20 MR. NOVIKOFF: Objection. Form. 3:02:08PM</p> <p>21 A They can't be appointed until those 3:02:10PM</p> <p>22 items have all been -- until those have been</p> <p>23 passed.</p> <p>24 Q And is there a form on which notice 3:02:16PM</p> <p>25 would be given to the village that the items in</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 223</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 question have been passed?</p> <p>3 MS. ZWILLING: Objection. Your 3:02:26PM</p> <p>4 question assumes that we have that</p> <p>5 information and pass it along to the</p> <p>6 village. You haven't determined how that</p> <p>7 information flows.</p> <p>8 MR. GRAFF: Let me back up. 3:02:32PM</p> <p>9 BY MR. GRAFF: 3:02:33PM</p> <p>10 Q Do you know what the source or basis 3:02:35PM</p> <p>11 for the statement "pending item, med, psych,</p> <p>12 agility, polygraph" on this form is?</p> <p>13 A We maintain a record of who has passed 3:02:45PM</p> <p>14 those tests. So if they had, we would remove</p> <p>15 the pending from the list certification.</p> <p>16 Q And how would you know they had passed 3:02:54PM</p> <p>17 it?</p> <p>18 A We keep records in our examinations 3:02:57PM</p> <p>19 division and certifications division.</p> <p>20 Q And would -- how would it be 3:03:02PM</p> <p>21 communicated to the village that those items</p> <p>22 were no longer pending if they were completed?</p> <p>23 MR. NOVIKOFF: Objection to form. 3:03:12PM</p> <p>24 A It could be something in writing. It 3:03:14PM</p> <p>25 could be a telephone call.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 224</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q So there wouldn't be like another 3:03:17PM</p> <p>3 certification of eligibles reissued?</p> <p>4 A No. 3:03:21PM</p> <p>5 Q How does the rule of three apply in 3:03:23PM</p> <p>6 the context of lists like this where there's</p> <p>7 pending items for each person?</p> <p>8 I can be more specific. Say the 3:03:34PM</p> <p>9 person ranked Number 5, Brian Butler, was the</p> <p>10 first to complete the pending items. Could he</p> <p>11 then be immediately hired?</p> <p>12 A No. 3:03:47PM</p> <p>13 Q Could you explain how the rule of 3:03:50PM</p> <p>14 these plays out in the context of a list of</p> <p>15 pending items?</p> <p>16 A Everybody has to complete those items. 3:03:55PM</p> <p>17 If anybody fails those items, then they can be</p> <p>18 bypassed. Then they don't appear on the cert</p> <p>19 anymore.</p> <p>20 Q Okay. There's one person listed in 3:04:09PM</p> <p>21 position one and then looks like a tie for</p> <p>22 position two?</p> <p>23 A Yes. 3:04:17PM</p> <p>24 Q Could the person then listed at 3:04:19PM</p> <p>25 position four ever be hired in compliance with</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 225</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Civil Service regulations, guidelines,</p> <p>3 specifications if persons 12 and two still had</p> <p>4 pending items?</p> <p>5 A They would all have to have completed 3:04:36PM</p> <p>6 those items before this cert could be acted</p> <p>7 upon.</p> <p>8 Q And what if positions 12 and two 3:04:42PM</p> <p>9 completed the items, would they still have to</p> <p>10 wait for positions four and five?</p> <p>11 A No, because they're immediately 3:04:50PM</p> <p>12 reachable.</p> <p>13 Q Is there any amount of time after 3:04:52PM</p> <p>14 which position four would no longer have to wait</p> <p>15 for one, two and two to complete the pending</p> <p>16 items?</p> <p>17 MR. NOVIKOFF: Objection. Form. 3:05:04PM</p> <p>18 A I don't understand your question. 3:05:05PM</p> <p>19 Q Well, is the person in position four 3:05:06PM</p> <p>20 forever precluded from -- let me ask another</p> <p>21 way.</p> <p>22 Do the people in position one, two and 3:05:14PM</p> <p>23 two ever lose that position if they don't,</p> <p>24 within some amount of time, complete the pending</p> <p>25 items?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

CYNTHIA DISTEFANO

A They only lose their position if they 3:05:25PM
fail one of the pending items.

**Q So they can remain on a certification 3:05:30PM
of eligibles until this certification of
eligibles itself expires?**

A Yes. And there is an expiration date 3:05:39PM
on the top.

Q What is the date? 3:05:43PM

A August 14th, 2006. 3:05:44PM

Q Is it -- 3:05:45PM

MR. NOVIKOFF: Is that where it says 3:05:48PM
"expiration date"?

THE WITNESS: Yes. 3:05:51PM

BY MR. GRAFF: 3:05:52PM

**Q The number above the date June 15th, 3:05:52PM
2006, do you know what that is?**

A Yes. It's the year and it's the 3:05:58PM
clerical person in the certifications unit that
processed this, and each year each clerical
person in there sequentially numbers
certifications they issue. So in 2006 Theresa
Albano, TA, issued this as her 355th
certification.

**Q What about just over to the left in 3:06:22PM
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CYNTHIA DISTEFANO

**bold for the position of pound sign and then a
string of numbers, do you know what those
numbers refer to?**

A That's the list number. List was 3:06:34PM
established in 2003. 5002 is the specification
number for the police department.

Q And police officer OC? 3:06:47PM

A Open competitive. 3:06:51PM

**Q How many positions of open competitive 3:06:58PM
police officers have been established through
Civil Service for the Village of Ocean Beach?**

A I'd have to look at their position 3:07:05PM
control.

**Q The total score indicated for each 3:07:18PM
applicant, do you see where I'm referring to?**

A Yes. 3:07:24PM

Q What does that refer to? 3:07:24PM

A The written test. 3:07:26PM

**Q Is there anything on that document 3:07:31PM
that indicates the date of that written test?**

A Yes -- oh, not the date of the test, 3:07:38PM
no. It indicates the date the list was
established.

**Q Is there a limit to the number of 3:07:47PM
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CYNTHIA DISTEFANO

**times that an individual can take the written
test for the position of police officer?**

A Just his age. 3:07:55PM

**Q What about position of police 3:07:57PM
sergeant?**

A A limit to the number of times, no. 3:08:01PM
Pay your \$100, we'll test you forever.

MS. ZWILLING: Do we know what the 3:08:10PM
record number of times to take the test is?

THE WITNESS: I have a guess. 3:08:14PM

MS. ZWILLING: People take and take 3:08:15PM
and retake these tests.

BY MR. GRAFF: 3:08:16PM

**Q On a certification of eligibles, does 3:08:16PM
anything indicate what number attempt at the
test is reflected in the total score here?**

A No. 3:08:25PM

**Q A little further over, there's the 3:08:33PM
heading "Action Code."**

A Yes. 3:08:36PM

Q What does that mean in this context? 3:08:36PM

A A, appointed. There's a key down at 3:08:38PM
the bottom. Action code legend.

**Q I see. And the effective date? 3:08:44PM
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CYNTHIA DISTEFANO

A Yes. 3:08:50PM

**Q That's the date when they were 3:08:51PM
actually appointed and hired to work in that
position?**

A Yes. 3:08:55PM

**Q So based on this document -- I know 3:09:00PM
you said you'd have to check your records. But
based on this record, there's at least two
police officer positions open competitive that
have been established to pursuant to Civil
Service rules?**

MR. NOVIKOFF: Objection. Form. 3:09:16PM

A Yes. 3:09:17PM

**Q Do you know the name Paul Trosco other 3:09:24PM
than from this document?**

A No. 3:09:29PM

**Q Without reading all of them -- and I 3:09:29PM
take it you know George Hesse -- do you
recognize any of the other names in that list?**

A No. 3:09:37PM

**Q Who completed or what individual or 3:09:48PM
entity or position would have responsibility or
authority to fill in the handwritten notations
on action code and effective date?**

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<p style="text-align: right;">Page 230</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A Maryann Minerva, who signed it. 3:10:00PM</p> <p>3 Q And then she would return it? 3:10:02PM</p> <p>4 A Yes. And then we review it to see 3:10:04PM</p> <p>5 whether those are legitimate appointments.</p> <p>6 Q Have you ever spoken directly with 3:10:19PM</p> <p>7 Maryann Minerva?</p> <p>8 A No. 3:10:22PM</p> <p>9 Q To your knowledge, was Maryann -- 3:10:23PM</p> <p>10 strike that.</p> <p>11 Is there anything on the document that 3:10:43PM</p> <p>12 indicates when it was received or viewed by</p> <p>13 Civil Service?</p> <p>14 MS. ZWILLING: You mean after it was 3:11:05PM</p> <p>15 signed by Maryann Minerva?</p> <p>16 MR. GRAFF: Yes. 3:11:07PM</p> <p>17 A We do clock them in, but that's not on 3:11:08PM</p> <p>18 this copy. It might be on the back of our copy.</p> <p>19 I don't know. On the original.</p> <p>20 Q When it says "village list," I 3:11:18PM</p> <p>21 understood that that indicates that these are</p> <p>22 all residents of Ocean Beach?</p> <p>23 A Yes. 3:11:25PM</p> <p>24 Q The second individual in position two, 3:11:28PM</p> <p>25 I think it says Michael Pagan.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 231</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A Yes. 3:11:34PM</p> <p>3 Q Has an address in Deer Park, New York. 3:11:35PM</p> <p>4 A It's a post office box. 3:11:37PM</p> <p>5 Q So the address that's listed on 3:11:53PM</p> <p>6 candidate information don't have to do with</p> <p>7 their residency status for purposes of making</p> <p>8 the local village list?</p> <p>9 MR. NOVIKOFF: Objection. 3:12:03PM</p> <p>10 A They have to provide us with their 3:12:04PM</p> <p>11 legal address in addition to a post office box.</p> <p>12 Q So there would be an additional 3:12:10PM</p> <p>13 address for these individuals here who are</p> <p>14 listed with post office box addresses?</p> <p>15 A Yes. This is a mailing address so 3:12:17PM</p> <p>16 they can be mailed their canvass letters.</p> <p>17 Q I see. And where would their physical 3:12:22PM</p> <p>18 address be located, if at all, in Civil Service</p> <p>19 documents?</p> <p>20 A On the application. 3:12:34PM</p> <p>21 Q That was the form we looked at a blank 3:12:35PM</p> <p>22 version earlier today?</p> <p>23 A There's a different form for law 3:12:39PM</p> <p>24 enforcement positions. It's similar, but it is</p> <p>25 a different form.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 232</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q Underneath, in the small text, it's a 3:12:55PM</p> <p>3 little hard to see. Underneath the line, the</p> <p>4 second line says "necessary special</p> <p>5 requirement"?</p> <p>6 A Yes. 3:13:06PM</p> <p>7 Q What is that referring to here? 3:13:07PM</p> <p>8 A It's directions to the hiring 3:13:13PM</p> <p>9 jurisdiction.</p> <p>10 Q Earlier, when we had looked at the 3:13:18PM</p> <p>11 Civil Service specifications --</p> <p>12 A Oh, no, it isn't. Excuse me. There 3:13:22PM</p> <p>13 isn't anything there. If there were, on the</p> <p>14 specifications certain ones have necessary</p> <p>15 special requirements, you need a particular</p> <p>16 license, for instance, and that would be listed</p> <p>17 there if there were one.</p> <p>18 Q So for the document CD 2 -- it's the 3:13:42PM</p> <p>19 police officer specification.</p> <p>20 A Yeah, I know. 3:13:56PM</p> <p>21 Q So on this document, there are 3:14:19PM</p> <p>22 necessary special requirements that are listed.</p> <p>23 A We don't list all of that for the 3:14:24PM</p> <p>24 police officers in that part of the</p> <p>25 certification.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 233</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q What types of necessary special 3:14:29PM</p> <p>3 requirements would be listed there if they</p> <p>4 existed?</p> <p>5 A Registered nurse certificate -- no, 3:14:38PM</p> <p>6 that's a bad example. Pistol permit, perhaps.</p> <p>7 Q And as far as you know -- this 3:14:58PM</p> <p>8 document is dated 2006. Today, though, is a</p> <p>9 pistol permit a necessary special requirement</p> <p>10 for the position of police officer open</p> <p>11 competitive in Ocean Beach?</p> <p>12 A I used that as an example. There are 3:15:11PM</p> <p>13 certain titles, not police officer. You asked</p> <p>14 for an example of a necessary special request.</p> <p>15 Q I understand. I'm asking now beyond 3:15:20PM</p> <p>16 it being an example.</p> <p>17 A That's part of their training. 3:15:23PM</p> <p>18 Obviously, they're taught how to shoot.</p> <p>19 Q But possessing a pistol permit -- 3:15:28PM</p> <p>20 A I don't believe police officers need 3:15:32PM</p> <p>21 one. The fact of being a police officer</p> <p>22 replaces that, to my knowledge.</p> <p>23 Q So in order to obtain appointment to 3:15:40PM</p> <p>24 the open competitive class position police</p> <p>25 officer, there isn't an independent requirement</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 234</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 of having a pistol permit?</p> <p>3 A No. They go through the academy. All 3:15:50PM</p> <p>4 they have to do is pass all these qualifying</p> <p>5 exams and be a high school graduate and be among</p> <p>6 the top three acceptors for the position.</p> <p>7 MR. GRAFF: I'll ask the court 3:16:10PM</p> <p>8 reporter to mark as Exhibit CD 13 a one-page</p> <p>9 document produced by the county without</p> <p>10 Bates numbers.</p> <p>11 (Whereupon, a letter was marked as 3:16:21PM</p> <p>12 DiStefano Exhibit 13 for identification, as</p> <p>13 of this date.)</p> <p>14 BY MR. GRAFF: 3:16:56PM</p> <p>15 Q Ms. DiStefano, when you've had a 3:16:57PM</p> <p>16 chance to look it over, could you tell me if the</p> <p>17 form of this document is something that you</p> <p>18 recognize, if not the specific addressee</p> <p>19 indicated at the top?</p> <p>20 A I recognize the form. I don't 3:17:11PM</p> <p>21 recognize the specific addressee.</p> <p>22 Q What is the function of this form? 3:17:18PM</p> <p>23 A It's the schedule for the physical 3:17:20PM</p> <p>24 fitness test for police officer for the Village</p> <p>25 of Ocean Beach part-time.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 235</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q At the bottom of the page, there's 3:17:31PM</p> <p>3 bold capital italicized text. "If you fail the</p> <p>4 physical fitness test or fail to appear for this</p> <p>5 test, you will eliminated from further</p> <p>6 consideration."</p> <p>7 Do you know what it means to be 3:17:45PM</p> <p>8 eliminated from further consideration in this</p> <p>9 context?</p> <p>10 MS. ZWILLING: Objection. I think 3:17:50PM</p> <p>11 it's pretty self-explanatory, but the</p> <p>12 witness can answer.</p> <p>13 BY MR. GRAFF: 3:17:54PM</p> <p>14 Q Are you, for example, forever barred 3:17:55PM</p> <p>15 from consideration for that position in Ocean</p> <p>16 Beach or is it something less than that?</p> <p>17 A This is for a part-time position. We 3:18:05PM</p> <p>18 might consider the person later. We don't like</p> <p>19 to waste our time and the time of the person who</p> <p>20 was going to administer the test.</p> <p>21 Q And is that true also if -- I may have 3:18:20PM</p> <p>22 misunderstood. If you failed the physical exam,</p> <p>23 is it permissible under Civil Service</p> <p>24 regulations, guidelines, specifications to take</p> <p>25 a physical fitness test as part of attempts to</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 236</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 attain another position?</p> <p>3 A There is an appeal process to this. 3:18:40PM</p> <p>4 You get one extra shot under appeal.</p> <p>5 Q And is that just be respect to, in the 3:18:45PM</p> <p>6 case of this document, applying for the police</p> <p>7 officer part-time position?</p> <p>8 A No. That's any time we administer the 3:18:54PM</p> <p>9 physical fitness test, the person may appeal.</p> <p>10 Q So just as an example. In the year 3:19:01PM</p> <p>11 2005 an individual failed a physical fitness</p> <p>12 test for this position. In the year 2008, could</p> <p>13 they take a physical fitness test for, say, a</p> <p>14 full-time police officer position?</p> <p>15 A Yes. 3:19:18PM</p> <p>16 Q Are there any criteria pursuant to 3:19:22PM</p> <p>17 which the decision is made whether or not a</p> <p>18 person is eliminated from further consideration</p> <p>19 as stated at the bottom of the document?</p> <p>20 MR. NOVIKOFF: Other than committing a 3:19:37PM</p> <p>21 felony?</p> <p>22 MR. GRAFF: That's not what it states 3:19:39PM</p> <p>23 there.</p> <p>24 A If they fail to appear, they're 3:19:42PM</p> <p>25 removed from consideration.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 237</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q I think earlier you had mentioned that 3:19:48PM</p> <p>3 sometimes there are exceptions to that. Was I</p> <p>4 mistaken?</p> <p>5 MR. NOVIKOFF: Objection. The 3:19:54PM</p> <p>6 testimony was what it was.</p> <p>7 MS. ZWILLING: I don't think that's 3:19:57PM</p> <p>8 what it was.</p> <p>9 BY MR. GRAFF: 3:19:59PM</p> <p>10 Q Are there exceptions? 3:19:59PM</p> <p>11 A For a part-time position, there might 3:20:00PM</p> <p>12 be if there were extenuating circumstances.</p> <p>13 Q What are the criteria, if any, for 3:20:07PM</p> <p>14 evaluating whether there are extenuating</p> <p>15 circumstances?</p> <p>16 A Depends what the reason is. 3:20:14PM</p> <p>17 Q So there's no preestablished set of 3:20:16PM</p> <p>18 criteria that would demonstrate extraordinary</p> <p>19 circumstances?</p> <p>20 A Established, no. 3:20:23PM</p> <p>21 Q Who has the responsibility or 3:20:24PM</p> <p>22 authority to grant an exception to that basic</p> <p>23 rule?</p> <p>24 A Stanley Pelk, whose name is on here, 3:20:32PM</p> <p>25 in the relatively simple matters. If it becomes</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

1 CYNTHIA DISTEFANO
2 a contentious issue, that would move up the
3 ladder to the chief of examinations or to the
4 personnel director.
5 **Q And the typewritten signature block 3:20:50PM**
6 **indicates Stanley Pelk, examinations division,**
7 **principal personnel analyst. Are there other**
8 **divisions in which principal personnel analysts**
9 **work in the department?**
10 A There are three divisions where 3:21:09PM
11 principal personnel analysts work.
12 **Q And what are the three? 3:21:15PM**
13 A Classification, examinations and 3:21:16PM
14 administration.
15 **Q So in the context of Ocean Beach, is 3:21:25PM**
16 **there a different principal personnel analyst in**
17 **each of those three departments whose**
18 **jurisdiction is Ocean Beach?**
19 A Classification is the only one that 3:21:37PM
20 has jurisdictions assigned to particular
21 analysts.
22 **Q What is Stanley Pelk's current 3:21:51PM**
23 **position?**
24 A Principal personnel analyst. 3:21:54PM
25 **Q Is he still in the examinations 3:21:56PM**
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1 CYNTHIA DISTEFANO
2 **division?**
3 A Yes, he is. 3:21:58PM
4 **Q Is he currently assigned to Ocean 3:21:59PM**
5 **Beach?**
6 A He's not assigned to Ocean Beach. 3:22:01PM
7 **Q I'm sorry. 3:22:03PM**
8 MR. GRAFF: This one is very brief. 3:22:14PM
9 It's a one-page document produced by Ocean
10 Beach bearing Bates No. 3847.
11 (Whereupon, Bates document 3847 was 3:22:20PM
12 marked as DiStefano Exhibit 14 for
13 identification, as of this date.)
14 BY MR. GRAFF: 3:23:00PM
15 **Q Ms. DiStefano, have you ever seen this 3:23:01PM**
16 **particular letter before? (Handing.)**
17 A I have not. 3:23:05PM
18 **Q I have a question just on the very 3:23:06PM**
19 **last sentence, last two sentences of the last**
20 **full paragraph.**
21 A May I read it? 3:23:13PM
22 **Q Please. 3:23:14PM**
23 A I have read it. 3:24:02PM
24 **Q The second-to-last sentence in the 3:24:03PM**
25 **paragraph, "According to Civil Service, you can**
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1 CYNTHIA DISTEFANO
2 **stay in a provisional position pending two**
3 **exams," is that an accurate statement with**
4 **respect to any Civil Service positions?**
5 MS. ZWILLING: Police or non-police? 3:24:16PM
6 MR. GRAFF: That exist in Ocean Beach, 3:24:18PM
7 yeah.
8 A It wouldn't be applicable to police 3:24:21PM
9 positions normally.
10 **Q Are there exceptions to that? 3:24:27PM**
11 A As I explained before, I'm not aware 3:24:29PM
12 of any provisional sergeants, but I would think
13 the possibility might exist.
14 **Q And if there was such a thing as 3:24:38PM**
15 **provisional sergeant, would it be true that you**
16 **could remain in that provisional position**
17 **pending two examinations?**
18 A Civil Service rule, as I explained to 3:24:49PM
19 you before, said that if you fail an exam, you
20 can be reappointed once if there are no willing
21 acceptors on the list; but if you fail twice,
22 you cannot be appointed a third time. So in
23 that context, that might literally be accurate.
24 **Q But it's assuming that after the first 3:25:15PM**
25 **fail, there's nobody else who's a willing**
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1 CYNTHIA DISTEFANO
2 **acceptor on the eligibility list; is that**
3 **correct?**
4 A Yes. 3:25:28PM
5 **Q And would the same be true with 3:25:29PM**
6 **respect to after the second fail?**
7 A No. If you fail twice, that's it. 3:25:33PM
8 You're not eligible for a third provisional
9 appointment.
10 **Q And the very last part that gives me 3:25:40PM**
11 **at least four to five years to pass the test, I**
12 **believe you said that the sergeant test is given**
13 **every two years?**
14 A It's every two years. 3:25:49PM
15 **Q I'm not very good with numbers and 3:25:55PM**
16 **months.**
17 MR. CONNOLLY: The author of that may 3:26:02PM
18 not be either.
19 MR. NOVIKOFF: You're asking the 3:26:06PM
20 witness to opine on the knowledge of the
21 author of this document as to the Civil
22 Service law.
23 MR. GRAFF: I'm not. 3:26:12PM
24 BY MR. GRAFF: 3:26:12PM
25 **Q If you're not sure, we can pass on the 3:26:13PM**
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<p style="text-align: right;">Page 242</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 question. But based on the recurring schedule</p> <p>3 for sergeant's exam, is there a way you can hold</p> <p>4 the position for as long as five years without</p> <p>5 passing?</p> <p>6 A Well, if the list had just been 3:26:28PM</p> <p>7 established and you were allowed to have a</p> <p>8 provisional appointment.</p> <p>9 Q So if the list had just been 3:26:34PM</p> <p>10 established but all of the sergeants had been no</p> <p>11 willing acceptors?</p> <p>12 A For the Village of Ocean Beach. This 3:26:40PM</p> <p>13 is a promotional list we're speaking of. So</p> <p>14 then ostensibly two years hence, we give the</p> <p>15 test again. So that's two years. And then the</p> <p>16 list is established maybe six months after the</p> <p>17 test is given. That's two and a half years.</p> <p>18 And then if another provisional appointment is</p> <p>19 possible, so the outside possibilities could be</p> <p>20 five years.</p> <p>21 Q Thank you for walking through that. 3:27:07PM</p> <p>22 I think we had covered this earlier. 3:27:20PM</p> <p>23 Maybe I misunderstood.</p> <p>24 If there's no willing acceptors on the 3:27:25PM</p> <p>25 jurisdictional list, can the provisional</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 243</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 appointment happen without first turning to the</p> <p>3 county-wide list?</p> <p>4 A On a promotional list, there is no 3:27:36PM</p> <p>5 county-wide list. It's exclusive to a</p> <p>6 particular jurisdiction.</p> <p>7 Q Just to be absolutely clear, and then 3:27:51PM</p> <p>8 let's take a break.</p> <p>9 For a promotional position, if a 3:27:55PM</p> <p>10 person was working out of title in the base</p> <p>11 position, would they ever be eligible under</p> <p>12 Civil Service rules to attain the promotional</p> <p>13 position?</p> <p>14 MR. NOVIKOFF: Form. 3:28:10PM</p> <p>15 MS. ZWILLING: Eligible or could they 3:28:11PM</p> <p>16 be appointed into it?</p> <p>17 BY MR. GRAFF: 3:28:14PM</p> <p>18 Q Could they be appointed to it? 3:28:14PM</p> <p>19 A Without having taken the examination? 3:28:16PM</p> <p>20 Q If they had been out of title for 3:28:18PM</p> <p>21 whatever reason and they hadn't been duly</p> <p>22 appointed and confirmed by Civil Service in the</p> <p>23 base position.</p> <p>24 A In the base position, yes. 3:28:28PM</p> <p>25 MR. NOVIKOFF: Objection to form. 3:28:30PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 244</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 3:28:31PM</p> <p>3 Q If you understand -- 3:28:31PM</p> <p>4 A You mean a police officer in this 3:28:33PM</p> <p>5 case?</p> <p>6 Q Yes. And sergeant is promotional from 3:28:35PM</p> <p>7 police officer?</p> <p>8 A Yes, it is. 3:28:38PM</p> <p>9 MR. NOVIKOFF: Objection. 3:28:39PM</p> <p>10 BY MR. GRAFF: 3:28:39PM</p> <p>11 Q So if you weren't holding the position 3:28:39PM</p> <p>12 of police officer in compliance with Civil</p> <p>13 Service requirements for the minimum period,</p> <p>14 could you ever validly be appointed to the</p> <p>15 promotional position of sergeant having not</p> <p>16 satisfied the police officer position?</p> <p>17 MR. NOVIKOFF: Objection. 3:28:55PM</p> <p>18 A You wouldn't be eligible to take the 3:28:56PM</p> <p>19 sergeant's examination.</p> <p>20 MR. GRAFF: Let's take a break. 3:29:00PM</p> <p>21 (Whereupon, a break was taken.) 3:29:01PM</p> <p>22 MR. GRAFF: This will be Exhibit 15. 3:36:39PM</p> <p>23 (Whereupon, a letter dated August 6, 3:36:42PM</p> <p>24 2007 was marked as DiStefano Exhibit 15 for</p> <p>25 identification, as of this date.)</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 245</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 3:37:03PM</p> <p>3 Q Ms. DiStefano, when you've had a 3:37:07PM</p> <p>4 chance to look over the document, if you could</p> <p>5 tell me if you've ever seen this actual letter</p> <p>6 before. (Handing.)</p> <p>7 A I have not. 3:37:16PM</p> <p>8 MR. NOVIKOFF: Was this produced by 3:37:18PM</p> <p>9 us? Only because there's no Bates stamp</p> <p>10 number.</p> <p>11 MR. GRAFF: I believe that it was 3:37:22PM</p> <p>12 produced once with and once without, and we</p> <p>13 had some trouble locating the one with.</p> <p>14 MR. NOVIKOFF: Okay. 3:37:29PM</p> <p>15 BY MR. GRAFF: 3:37:29PM</p> <p>16 Q If I could direct your attention, 3:37:32PM</p> <p>17 please, to the full paragraph, first full</p> <p>18 paragraph of text, "Civil Service rules and</p> <p>19 regulations require you to work at least one</p> <p>20 tour during the calendar year."</p> <p>21 Do you know, Ms. DiStefano, whether 3:37:46PM</p> <p>22 there are Civil Service rules and regulations</p> <p>23 that require that?</p> <p>24 A I'm not aware of any. 3:37:52PM</p> <p>25 Q Does that statement make any sense, as 3:37:54PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

Page 246

Page 247

1 CYNTHIA DISTEFANO
2 far as you know?
3 MR. NOVIKOFF: Objection. 3:37:57PM
4 A I can't think what Civil Service rule 3:38:03PM
5 and regulation would be applicable there.
6 Q And the next sentence, "You may work 3:38:07PM
7 one tour for the village under modified duty
8 assignment to fulfill the requirement and
9 fulfill your status."
10 Do you know any Civil Service rules, 3:38:19PM
11 specifications or guidelines that would
12 establish that as a requirement?
13 A I don't know what his status was, so I 3:38:23PM
14 would not be prepared to comment on that.
15 Q If Officer Carollo was a full-time 3:38:30PM
16 police officer, competitive class, would he be
17 required to work at least one tour in the
18 calendar year to be able to maintain that
19 position the year after?
20 A We really wouldn't know, unless it 3:38:45PM
21 showed on the payroll that he hadn't worked in a
22 year, at which point we would ask questions.
23 Q And are there routine protocols to -- 3:38:53PM
24 in reviewing those forms to determine whether
25 someone has worked a minimum amount in a year?
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Page 248

1 CYNTHIA DISTEFANO
2 A Not in the context of Civil Service, 3:40:25PM
3 no.
4 Q In what context are you familiar with 3:40:28PM
5 modified duty assignment?
6 A For people who are injured and can't 3:40:33PM
7 perform the full range of duties, they might get
8 light duty, modified duty until they are well
9 enough to function at full at level.
10 Q And does a municipality need to report 3:40:50PM
11 to Civil Service if an employee in a competitive
12 class position is assigned to modified duties
13 rather than the duties of their title?
14 A No. 3:41:00PM
15 Q To your knowledge, did Joseph 3:41:01PM
16 Loeffler, mayor of Ocean Beach, ever make
17 inquiry, as far as you know, to the Civil
18 Service Department with respect to modified duty
19 in Civil Service issues?
20 A Not to my knowledge. 3:41:18PM
21 Q Earlier today, we had talked about a 3:41:22PM
22 meeting that you were a participant in with
23 Mayor Loeffler and some other representatives.
24 Do you recall the meeting I'm referring to?
25 A Yes. 3:41:33PM
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1 CYNTHIA DISTEFANO
2 Is that something the personnel analyst
3 specifically looks for?
4 A Depends what the payroll looks like. 3:39:13PM
5 Q But is that a subject that the 3:39:17PM
6 personnel analyst would particularly be
7 investigating or is it just something that if
8 they noticed they could act on?
9 A Well, if it were obvious that somebody 3:39:26PM
10 hadn't worked for a long period of time, we
11 would ask questions and see what the situation
12 was.
13 Q Do you know who Paul Carollo is? 3:39:38PM
14 A I have a glancing knowledge of the 3:39:45PM
15 name, but I don't know him.
16 Q In what context do you have a 3:39:47PM
17 glancing --
18 A I've seen lists of police officers for 3:39:51PM
19 Ocean Beach often enough that some of the names
20 are familiar.
21 Q To your knowledge, did -- different 3:40:13PM
22 question again.
23 Is modified duty assignment, does that 3:40:18PM
24 mean anything in the context of Civil Service in
25 Suffolk County?
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Page 249

1 CYNTHIA DISTEFANO
2 Q To your knowledge, was there a 3:41:34PM
3 subsequent meeting with representatives of Ocean
4 Beach and of the Suffolk County Department of
5 Civil Service?
6 A No. 3:41:40PM
7 Q Was there a prior meeting that you're 3:41:41PM
8 aware of with those parties?
9 A I'm not aware of. 3:41:45PM
10 Q Just to be clear, do you know if a 3:41:50PM
11 meeting happened or not, or is it possible that
12 one happened that you're not aware of?
13 MR. NOVIKOFF: Objection. 3:42:00PM
14 A It's possible. You asked me what I 3:42:01PM
15 was aware of.
16 Q All right. Thank you. We can put 3:42:03PM
17 aside Exhibit CD 15.
18 Very briefly, I do want to ask a 3:42:37PM
19 couple of questions on an older form.
20 MR. GRAFF: Please mark this as CD 16. 3:42:48PM
21 (Whereupon, Suffolk County Department 3:42:52PM
22 of Civil Service Certification of Eligibles
23 was marked as DiStefano Exhibit 16 for
24 identification, as of this date.)
25 TSG Reporting - Worldwide (877) 702-9580

<p style="text-align: right;">Page 250</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 3:43:29PM</p> <p>3 Q This is another certification of 3:43:36PM</p> <p>4 eligibles. This one is dated May 16th, 1995.</p> <p>5 But it appears to be in a very similar form to</p> <p>6 the other certification we were looking at.</p> <p>7 (Handing.)</p> <p>8 If you could just let me know when 3:43:52PM</p> <p>9 you've had a chance to review it.</p> <p>10 A I have reviewed it. 3:43:56PM</p> <p>11 Q Now, in the top area between two lines 3:44:05PM</p> <p>12 there's capitals, "list not pre-canvassed."</p> <p>13 A Yes. 3:44:15PM</p> <p>14 Q And then underneath that again there's 3:44:18PM</p> <p>15 the language, "The candidates listed below have</p> <p>16 been pre-canvassed by the department," and</p> <p>17 there's a date filled in.</p> <p>18 A Yes. 3:44:33PM</p> <p>19 Q Just to be clear, is this language 3:44:35PM</p> <p>20 here not applicable in light of the statement</p> <p>21 "list not pre-canvassed"?</p> <p>22 A It's the same as the other one in that 3:44:44PM</p> <p>23 regard, yes.</p> <p>24 Q And then at the top, "for the position 3:44:46PM</p> <p>25 of." Do you see that line?</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 251</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A Yes. 3:44:52PM</p> <p>3 Q Going off towards the end of it, 3:44:52PM</p> <p>4 there's 10/2/92 and then some more</p> <p>5 abbreviations. Do you know what the remainder</p> <p>6 of that line says?</p> <p>7 A It was established 10-2-92 and it's 3:45:02PM</p> <p>8 extended to establishment of new list.</p> <p>9 Q Do you understand what that means in 3:45:11PM</p> <p>10 this context?</p> <p>11 A Yes. 3:45:13PM</p> <p>12 Q Can you explain that, please? 3:45:14PM</p> <p>13 A A list may live up to four years per 3:45:15PM</p> <p>14 Civil Service law. When a new list is</p> <p>15 established prior to the four years, then the</p> <p>16 existing list dies and it's replaced by the new</p> <p>17 one. We used to put that on as standard</p> <p>18 language. We don't do that anymore.</p> <p>19 Q And the expiration date written in, 3:45:33PM</p> <p>20 July 15th, '95, is that at all modified by the</p> <p>21 extension language that you just explained?</p> <p>22 A There are two things we're talking 3:45:44PM</p> <p>23 about. We're talking about the list, which can</p> <p>24 live for four years from the date that it's</p> <p>25 established, and the certification of eligibles,</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 252</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 which used to be issued for 30 days. Now we</p> <p>3 issue for 60 days. So certification is a much</p> <p>4 shorter lived document than the eligibles list</p> <p>5 itself.</p> <p>6 Q That's all for that form. Thank you. 3:46:12PM</p> <p>7 MR. GRAFF: This is a one-page 3:46:29PM</p> <p>8 document, CD 17, produced without Bates</p> <p>9 number.</p> <p>10 (Whereupon, a letter dated October 6, 3:46:36PM</p> <p>11 2005 was marked as DiStefano Exhibit 17 for</p> <p>12 identification, as of this date.)</p> <p>13 BY MR. GRAFF: 3:47:32PM</p> <p>14 Q Ms. DiStefano, have you had a chance 3:47:32PM</p> <p>15 to read this over?</p> <p>16 A I have. 3:47:35PM</p> <p>17 Q Have you seen this letter before? 3:47:35PM</p> <p>18 A I'm not sure. 3:47:39PM</p> <p>19 Q Do you know who Alan Loeffler is? 3:47:40PM</p> <p>20 He's referenced in the first sentence of the</p> <p>21 first paragraph.</p> <p>22 A Just as the letter describes him, as a 3:47:48PM</p> <p>23 police officer in the village.</p> <p>24 Q Other than that, do you have any -- 3:47:51PM</p> <p>25 A No. 3:47:53PM</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 253</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q The last sentence of the first 3:47:59PM</p> <p>3 paragraph of this letter signed by Phillip B.</p> <p>4 Cohen, principal personnel analyst, the last</p> <p>5 sentence of the full paragraph, first full</p> <p>6 paragraph states, "If Mr. Loeffler has not met</p> <p>7 this requirement, we cannot certify his</p> <p>8 employment with the village as a police</p> <p>9 officer." Do you know what it means to certify</p> <p>10 his employment in this context?</p> <p>11 A Certify -- the next time the payroll 3:48:28PM</p> <p>12 comes up -- we have a duty to certify employment</p> <p>13 as in conformance, and we will not be able to do</p> <p>14 that with this person unless he produces proof</p> <p>15 that he's got his training.</p> <p>16 Q And is the certification referenced in 3:48:43PM</p> <p>17 this context different than certifying the</p> <p>18 payroll?</p> <p>19 A It's the employment, is really -- 3:48:53PM</p> <p>20 yeah. We're certifying the payroll in that the</p> <p>21 employment shown on the payroll conforms with</p> <p>22 our records. So we certify the payroll. We</p> <p>23 also certify the employment on an ongoing basis</p> <p>24 in conjunction with these CS-150s, or we send a</p> <p>25 letter in this case when something comes up that</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

1 CYNTHIA DISTEFANO
2 we can no longer certify that employment as in
3 conformance.
4 **Q Other than the certification and 3:49:23PM**
5 **payroll and certification of CS-150s, are there**
6 **any other aspects of certification of employment**
7 **that have to be done routinely?**
8 A No. 3:49:36PM
9 **Q Looking at the second paragraph, 3:49:41PM**
10 **I'm -- for the sake of the court reporter, I'm**
11 **just going to only read out the second sentence.**
12 **"Continued employment would be a violation of**
13 **New York State Civil Service law."**
14 **In the context of this paragraph, do 3:49:58PM**
15 **you understand what that's referring to?**
16 A I do. 3:50:02PM
17 **Q Can you explain that, please. 3:50:03PM**
18 A Civil Service law mandates that 3:50:04PM
19 employment be in conformance with the law and
20 continued employment in violation is a
21 misdemeanor, according to, what, Section 100 or
22 thereabouts.
23 **Q Other than Section 100 or thereabouts, 3:50:20PM**
24 **are you aware of any other specific provision of**
25 **Civil Service law that this would refer to?**
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1 CYNTHIA DISTEFANO
2 Civil Service.
3 **Q And as far as you know, on 3:51:54PM**
4 **October 6th, 2005, was Edward Paradiso chief**
5 **of the Ocean Beach village police department?**
6 A Edward Paradiso was never chief of the 3:52:04PM
7 Ocean Beach village police department.
8 **Q Do you know why Phillip Cohen would've 3:52:10PM**
9 **addressed a letter to him in that capacity?**
10 A He used the village's in-house title. 3:52:20PM
11 Edward Paradiso is a sergeant.
12 **Q And are there -- okay. 3:52:28PM**
13 **As far as you know, are there any 3:52:39PM**
14 **other individuals or positions in the Ocean**
15 **Beach -- in the Village of Ocean Beach that had**
16 **in-house titles that were not the same as Civil**
17 **Service titles?**
18 MS. ZWILLING: How would she know 3:52:50PM
19 that?
20 MR. GRAFF: If she knows. She can 3:52:52PM
21 answer as far as you knows.
22 A George Hesse. 3:52:56PM
23 **Q And what was the official title for 3:52:57PM**
24 **George Hesse?**
25 A Police officer. 3:53:01PM
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1 CYNTHIA DISTEFANO
2 A It's difficult to isolate in that 3:50:41PM
3 context. Civil Service law describes the whole
4 employment process, and this is a part of it
5 that's not in conformance. The specification
6 says you have to have this, and that shows a
7 violation.
8 **Q And I know you didn't recognize the 3:51:01PM**
9 **Alan Loeffler name specifically. But is the**
10 **issue of a person working as a police officer in**
11 **Ocean Beach without having the Municipal Police**
12 **Training Council certificate something you**
13 **remember having discussed with Phillip Cohen in**
14 **or around October 2005?**
15 A No. 3:51:23PM
16 **Q The top left of the letterhead block, 3:51:29PM**
17 **where it has the address, says "Department of**
18 **Civil Service/Human Resources."**
19 A Yes. 3:51:37PM
20 **Q What is human resources referred to in 3:51:37PM**
21 **that context?**
22 A That's the official name of the 3:51:41PM
23 department.
24 **Q Of Civil Service? 3:51:43PM**
25 A Yes. We handle things in addition to 3:51:44PM
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1 CYNTHIA DISTEFANO
2 **Q And the in-house title that you're 3:53:01PM**
3 **aware of?**
4 A Chief, acting chief, sergeant. 3:53:07PM
5 **Q Other than Ed Paradiso and George 3:53:10PM**
6 **Hesse, are you aware of any other employees at**
7 **Ocean Beach whose in-house titles didn't match**
8 **their Civil Service titles?**
9 A No. 3:53:22PM
10 **Q Other than this letter itself, have 3:53:26PM**
11 **you ever seen another letter from a**
12 **representative of the Civil Service Department**
13 **addressed to somebody by their in-house title**
14 **rather than Civil Service title?**
15 A I don't know. 3:53:41PM
16 MR. GRAFF: If we could take a short 3:53:48PM
17 break.
18 (Whereupon, a break was taken.) 3:53:57PM
19 BY MR. GRAFF: 3:57:53PM
20 **Q We may have already covered this. 3:58:15PM**
21 **Just to be clear, a provisional appointment,**
22 **when it's made, does it require any approval by**
23 **the Civil Service Department to appoint someone**
24 **provisionally?**
25 A Yes. 3:58:27PM
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1 CYNTHIA DISTEFANO
2 **Q And are there any criteria used to 3:58:29PM**
3 **determine whether to approve a provisional**
4 **appointment?**
5 A Yes. 3:58:38PM
6 **Q And what are those criteria? 3:58:39PM**
7 A That there is no valid eligible list 3:58:41PM
8 with three willing acceptors and that the person
9 appointed meets all of the qualifications.
10 **Q And until approval is granted, is it 3:58:51PM**
11 **consistent with Civil Service laws for the**
12 **individual in question to begin serving in the**
13 **capacity to which they're being provisionally**
14 **appointed, like while approval is pending?**
15 A There are many positions that evolve 3:59:13PM
16 as time goes on and more responsibilities are
17 added. So somebody might be working above
18 whatever level, and then they start a process to
19 make a provisional appointment. For an official
20 appointment and an increase in salary, that
21 shouldn't occur before we approve it. But if we
22 approve it shortly thereafter, we're not going
23 to fuss about that.
24 **Q Ms. DiStefano, did you do anything to 3:59:46PM**
25 **prepare for today's deposition?**
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1 CYNTHIA DISTEFANO
2 A That's the employment record that's 4:00:48PM
3 produced via the CS-150 report of personnel
4 changes.
5 MS. ZWILLING: The roster cards that 4:00:55PM
6 we went through with Allison Sanchez's
7 deposition.
8 MR. GRAFF: Do we not have those? 4:01:01PM
9 MS. ZWILLING: Yes. You used them as 4:01:03PM
10 exhibits at Allison Sanchez's deposition.
11 MR. GRAFF: Off the record. 4:01:10PM
12 (Whereupon, a discussion was held off 4:01:11PM
13 the record.)
14 BY MR. GRAFF: 4:02:21PM
15 **Q Other than reviewing those documents 4:02:42PM**
16 **and meeting with Ms. Zwilling, was there**
17 **anything else that you did to prepare in**
18 **connection with your deposition today?**
19 A No. 4:02:49PM
20 **Q Did you review any Civil Service 4:02:50PM**
21 **regulations in advance of the deposition?**
22 A I read 75B. 4:02:57PM
23 **Q And did you read that in a McKinney's 4:03:02PM**
24 **book?**
25 A Yes. 4:03:06PM
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1 CYNTHIA DISTEFANO
2 A I met with Arlene Zwilling yesterday. 3:59:51PM
3 MR. GRAFF: Arlene, I assume that's an 4:00:00PM
4 attorney-client meeting?
5 MS. ZWILLING: Yes. Of course. 4:00:03PM
6 BY MR. GRAFF: 4:00:04PM
7 **Q Other than meeting with 4:00:05PM**
8 **Ms. Zwilling -- let me just back once more.**
9 **Did the Civil Service Department ever 4:00:12PM**
10 **approve George Hesse's provisional promotion to**
11 **the sergeant's position?**
12 A No. 4:00:20PM
13 **Q Other than your meeting with 4:00:20PM**
14 **Ms. Zwilling yesterday, did you do anything else**
15 **to prepare in connection with your deposition**
16 **today?**
17 A I read through the documents that we 4:00:27PM
18 have in our file.
19 **Q Are those the documents that were 4:00:31PM**
20 **produced in this case, if you know?**
21 A Yes. 4:00:36PM
22 **Q Did you review any other documents? 4:00:36PM**
23 A Roster records. 4:00:41PM
24 **Q And what are the roster records that 4:00:45PM**
25 **you're referring to?**
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1 CYNTHIA DISTEFANO
2 **Q Did you read any other provisions of 4:03:07PM**
3 **Civil Service law?**
4 A Not in specific preparation for this, 4:03:11PM
5 no.
6 **Q Did you review any specific Civil 4:03:17PM**
7 **Service rules in preparation for this**
8 **deposition?**
9 A No. 4:03:24PM
10 **Q Did you speak to anyone else other 4:03:24PM**
11 **than Ms. Zwilling in connection with your**
12 **deposition today?**
13 A I let Alan Schneider know I was coming 4:03:30PM
14 here for this.
15 **Q And when did you let him know that? 4:03:35PM**
16 A It was within the last few weeks, when 4:03:40PM
17 we set the date up.
18 **Q Other than letting him know it had 4:03:44PM**
19 **been scheduled, did you have any further**
20 **conversations with Alan Schneider?**
21 A Not about this subject, no. 4:03:52PM
22 MR. GRAFF: I don't mean to intrude on 4:03:59PM
23 attorney-client with the next question. I'm
24 happy if you tell me that's where it's
25 going.
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Page 262	Page 263
<p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 4:04:05PM</p> <p>3 Q Do you know who made the decision to 4:04:05PM</p> <p>4 have you appear as the witness at this</p> <p>5 deposition?</p> <p>6 A Arlene Zwilling and I talked about who 4:04:16PM</p> <p>7 might be a source of the sort of information she</p> <p>8 thought you were seeking, and we came up with</p> <p>9 me.</p> <p>10 Q I believe you testified earlier that 4:04:32PM</p> <p>11 you had reviewed the complaint filed in federal</p> <p>12 court in this case; is that true?</p> <p>13 MS. ZWILLING: Are you asking her if 4:04:40PM</p> <p>14 her prior testimony is true?</p> <p>15 MR. GRAFF: If my recollection of the 4:04:43PM</p> <p>16 testimony is correct.</p> <p>17 MS. ZWILLING: Yes, she did say that. 4:04:50PM</p> <p>18 BY MR. GRAFF: 4:04:51PM</p> <p>19 Q When did you first review the 4:04:51PM</p> <p>20 complaint in this case?</p> <p>21 A I don't remember. 4:04:54PM</p> <p>22 Q When did you most recently review the 4:04:55PM</p> <p>23 complaint in this case?</p> <p>24 A I probably glanced at it within the 4:04:59PM</p> <p>25 last few days, but I didn't read it carefully.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 Q Did you ever discuss any of the 4:05:01PM</p> <p>3 allegations in the complaint with anyone other</p> <p>4 than Ms. Zwilling?</p> <p>5 A When I first saw it, I discussed it in 4:05:09PM</p> <p>6 my department.</p> <p>7 Q Who did you discuss it with in your 4:05:12PM</p> <p>8 department?</p> <p>9 A With Alan Schneider and with Phillip 4:05:15PM</p> <p>10 Cohen.</p> <p>11 Q Did you discuss it with anyone else? 4:05:19PM</p> <p>12 A No. 4:05:20PM</p> <p>13 Q Did you discuss it with both of them 4:05:24PM</p> <p>14 jointly or in separate conversations?</p> <p>15 A Both. 4:05:28PM</p> <p>16 Q Was there one occasion when you 4:05:30PM</p> <p>17 discussed it together with both of them?</p> <p>18 A I don't know. 4:05:35PM</p> <p>19 And I discussed it also with Allison. 4:05:39PM</p> <p>20 She was in the department.</p> <p>21 Q Allison Sanchez? 4:05:44PM</p> <p>22 A Yes. 4:05:45PM</p> <p>23 MR. NOVIKOFF: I wondered when you 4:05:51PM</p> <p>24 were going to get to this line of</p> <p>25 questioning.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 264	Page 265
<p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 4:05:54PM</p> <p>3 Q Do you recall any of the substance of 4:06:01PM</p> <p>4 what was discussed about the allegations in your</p> <p>5 conversation with Mr. Schneider and Mr. Cohen?</p> <p>6 A We looked at the records to see 4:06:16PM</p> <p>7 whether we thought there was any substance in</p> <p>8 the allegation that some rights had been</p> <p>9 violated.</p> <p>10 Q And did the three of you look at the 4:06:31PM</p> <p>11 records together?</p> <p>12 A I don't remember. 4:06:35PM</p> <p>13 Q Did your conversation with 4:06:38PM</p> <p>14 Mr. Schneider and Mr. Cohen happen prior to your</p> <p>15 conversation with Ms. Sanchez?</p> <p>16 A Yes. 4:06:46PM</p> <p>17 Q In your conversation with 4:06:56PM</p> <p>18 Mr. Schneider and Mr. Cohen, was any conclusion</p> <p>19 or consensus reached with respect to whether any</p> <p>20 of the allegations had merit?</p> <p>21 MR. NOVIKOFF: Allegations in general 4:07:07PM</p> <p>22 or allegations pertaining to the Civil</p> <p>23 Service Department?</p> <p>24 MR. GRAFF: Specifically first 4:07:13PM</p> <p>25 pertaining to the Civil Service.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: I'm going to object, 4:07:17PM</p> <p>3 but the witness can answer the question.</p> <p>4 A What we were concerned with was were 4:07:27PM</p> <p>5 the rights of anyone violated in the dismissal,</p> <p>6 and we looked at the roster cards to see whether</p> <p>7 Civil Service protection was afforded to anyone</p> <p>8 who was let go.</p> <p>9 Q Was there any discussion or reference 4:07:47PM</p> <p>10 to Civil Service law Section 75B as it might or</p> <p>11 might not apply to the plaintiffs?</p> <p>12 A Not to my recollection. 4:07:57PM</p> <p>13 Q Do you recall ever discussing that 4:08:00PM</p> <p>14 provision with anyone in the Civil Service</p> <p>15 Department?</p> <p>16 A Ever? 4:08:05PM</p> <p>17 Q Yes. 4:08:06PM</p> <p>18 A Or in conjunction with this -- 4:08:06PM</p> <p>19 Q No. Ever. 4:08:08PM</p> <p>20 A I addressed that this morning. 4:08:12PM</p> <p>21 MR. GRAFF: Off the record. 4:08:16PM</p> <p>22 (Whereupon, a discussion was held off 4:08:16PM</p> <p>23 the record.)</p> <p>24 MR. GRAFF: Back on the record. 4:09:07PM</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 4:09:15PM
3 **Q Ms. DiStefano, my question is: Have 4:09:15PM**
4 **you ever had any discussions with anyone in the**
5 **Civil Service Department at any point, not**
6 **necessarily in connection with this case, about**
7 **the meaning and implications of Civil Service**
8 **law 75B?**
9 A Just as I mentioned this morning, very 4:09:34PM
10 peripherally in relation to that one incident.
11 **Q Does anybody in the Civil Service 4:09:40PM**
12 **Department have any particular expertise with**
13 **respect to Section 75B? And I'm not talking**
14 **about counsel.**
15 A No. 4:09:52PM
16 **Q Do you recall whether in your 4:10:00PM**
17 **conversation with Mr. Schneider and Mr. Cohen,**
18 **there was any discussion of a specific**
19 **allegation in the complaint that included a**
20 **quotation "leg to stand on" as an expression?**
21 A No. 4:10:15PM
22 **Q Does that sound familiar? 4:10:16PM**
23 A No. 4:10:17PM
24 **Q Did your discussion with Mr. Schneider 4:10:28PM**
25 **or Mr. Cohen address any other allegations in**
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1 CYNTHIA DISTEFANO
2 **and Mr. Cohen?**
3 A We discussed just asking her whether 4:11:43PM
4 or not she had such a relationship.
5 **Q And without getting into whether she 4:11:49PM**
6 **did or didn't --**
7 MR. NOVIKOFF: Oh, no, no, no. That's 4:11:55PM
8 the one area where I think that you have
9 some relevance since you alleged it, so
10 let's get into that.
11 BY MR. GRAFF: 4:12:03PM
12 **Q Would there be anything improper under 4:12:03PM**
13 **Civil Service laws or regulations or**
14 **specifications if that allegation were true?**
15 A As long as it didn't impact on the 4:12:15PM
16 performance of the work in the Civil Service
17 Department, no.
18 **Q Did either Mr. Schneider or Mr. Cohen 4:12:25PM**
19 **indicate that they had prior conversations with**
20 **Ms. Sanchez with respect to any of the matters**
21 **alleged in the complaint?**
22 MR. NOVIKOFF: That's a pretty broad 4:12:38PM
23 question. Form objection.
24 A I don't know for sure. 4:12:42PM
25 MR. NOVIKOFF: You allege issues 4:12:44PM
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1 CYNTHIA DISTEFANO
2 **the complaint with respect to other entities?**
3 A Yes. 4:10:36PM
4 **Q And do you recall in substance -- in 4:10:37PM**
5 **substance, what those allegations that you**
6 **discussed were?**
7 A There was an allegation of a 4:10:45PM
8 relationship between Allison and George Hesse.
9 **Q Did you discuss any other allegations 4:10:52PM**
10 **in the complaint, other than those addressed to**
11 **Civil Service or to Ms. Sanchez's alleged**
12 **relationship with Mr. Hesse?**
13 A I don't think so, but I couldn't 4:11:03PM
14 itemize the complaint.
15 **Q And how long after speaking to 4:11:10PM**
16 **Mr. Schneider and Mr. Cohen did you speak to**
17 **Ms. Sanchez?**
18 A I don't know precisely. 4:11:19PM
19 **Q Did you discuss with Mr. Schneider and 4:11:20PM**
20 **Mr. Cohen how you would approach or speak with**
21 **Ms. Sanchez about the allegations in the**
22 **complaint?**
23 A About the relationship issue, yes. 4:11:34PM
24 **Q And in substance, what did you discuss 4:11:36PM**
25 **about the relationship issue with Mr. Schneider**
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1 CYNTHIA DISTEFANO
2 concerning certification, so your question
3 arguably could be related to that, right?
4 MR. GRAFF: Yeah, that's actually what 4:12:53PM
5 I had intended. I'm sorry if I wasn't
6 clear.
7 BY MR. GRAFF: 4:12:58PM
8 **Q Did either Mr. Schneider or Mr. Cohen 4:12:59PM**
9 **indicate that they had prior communications with**
10 **Ms. Sanchez regarding certification issues and**
11 **Ocean Beach?**
12 A Oh, Phillip Cohen certainly did. 4:13:09PM
13 **Q During that conversation that we've 4:13:12PM**
14 **been discussing, did Mr. Cohen say anything with**
15 **respect to certification issues in Ocean Beach?**
16 MR. NOVIKOFF: Objection to form. 4:13:21PM
17 A He was very pleased with the efforts 4:13:23PM
18 that Allison made to get their employees in
19 conformance with Civil Service law or off their
20 payroll.
21 **Q And was he pleased at the level of her 4:13:32PM**
22 **effort or at the success of her effort, if that**
23 **distinction was clear to you?**
24 A Well, you're asking me for my opinion 4:13:44PM
25 as to what his judgment was.
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<p style="text-align: right;">Page 270</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q Right. As to what to his judgment was 4:13:49PM</p> <p>3 as communicated to you in that conversation.</p> <p>4 A He was pleased with both the 4:13:58PM</p> <p>5 performance and the results.</p> <p>6 Q And other than expressing pleasure 4:14:03PM</p> <p>7 with those two items, was anything else</p> <p>8 discussed with respect to Civil Service</p> <p>9 certification issues in Ocean Beach during that</p> <p>10 conversation with you and Mr. Schneider and</p> <p>11 Mr. Cohen?</p> <p>12 A We're not speaking of a specific 4:14:19PM</p> <p>13 conversation. We're speaking of a series.</p> <p>14 Q Okay. When you ultimately spoke to 4:14:25PM</p> <p>15 Allison Sanchez, what did you say to her?</p> <p>16 A We asked her whether she had a 4:14:36PM</p> <p>17 relationship with George Hesse.</p> <p>18 Q When you say "we," who are you 4:14:42PM</p> <p>19 referring to?</p> <p>20 A Alan Schneider and I. 4:14:44PM</p> <p>21 Q Where did that conversation take 4:14:46PM</p> <p>22 place?</p> <p>23 A In my office. 4:14:48PM</p> <p>24 Q Prior to -- during that conversation, 4:14:52PM</p> <p>25 did Ms. Sanchez communicate to you that she was</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 271</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 already aware of the allegations in the</p> <p>3 complaint?</p> <p>4 A No. 4:15:03PM</p> <p>5 Q Did she communicate to you that she 4:15:08PM</p> <p>6 was learning of those allegations for the first</p> <p>7 time in the meeting?</p> <p>8 MS. ZWILLING: Objection. 4:15:13PM</p> <p>9 MR. NOVIKOFF: Yeah. 4:15:16PM</p> <p>10 MS. ZWILLING: Your question assumes 4:15:17PM</p> <p>11 that prior to the conversation the witness</p> <p>12 has described, Allison Sanchez was in</p> <p>13 possession of a copy of the Complaint and</p> <p>14 had reviewed it, which may or may not be the</p> <p>15 case.</p> <p>16 MR. GRAFF: My question is whether or 4:15:26PM</p> <p>17 not Allison Sanchez indicated that was the</p> <p>18 case either way.</p> <p>19 A Not to me. 4:15:32PM</p> <p>20 MR. NOVIKOFF: I'm still objecting to 4:15:34PM</p> <p>21 form.</p> <p>22 BY MR. GRAFF: 4:15:36PM</p> <p>23 Q And what did Ms. Sanchez say in 4:15:37PM</p> <p>24 response to that question?</p> <p>25 A She said no. 4:15:40PM</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 272</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q Did she say anything else in that 4:15:47PM</p> <p>3 conversation?</p> <p>4 A We asked the question, and she 4:15:51PM</p> <p>5 answered the question. She did not have a</p> <p>6 relationship with George Hesse.</p> <p>7 Q Other than that one question and one 4:15:56PM</p> <p>8 response, was anything else discussed in that</p> <p>9 meeting with Allison Sanchez?</p> <p>10 A I don't remember. That was the 4:16:07PM</p> <p>11 specific purpose of the meeting.</p> <p>12 Q And other than your conversation with 4:16:14PM</p> <p>13 Mr. Schneider and Mr. Cohen and now this meeting</p> <p>14 with Ms. Sanchez, did you speak to anyone else</p> <p>15 about any of the allegations in the complaint?</p> <p>16 MS. ZWILLING: Any of the allegations 4:16:26PM</p> <p>17 or the ones involving Civil Service?</p> <p>18 MR. GRAFF: I'm asking more broadly, 4:16:29PM</p> <p>19 any of the allegations.</p> <p>20 MR. NOVIKOFF: I object to the form. 4:16:34PM</p> <p>21 A I don't -- I don't remember. 4:16:37PM</p> <p>22 Q Do you remember whether you had any 4:16:38PM</p> <p>23 discussions with anyone, other than those people</p> <p>24 we've identified, regarding the allegations</p> <p>25 specifically pertaining to Civil Service?</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 273</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A I don't understand your question. 4:16:53PM</p> <p>3 Q Do you remember if you discussed the 4:16:54PM</p> <p>4 allegations about the Civil Service Department</p> <p>5 in the complaint with anyone either than</p> <p>6 Mr. Schneider, Mr. Cohen or Ms. Sanchez?</p> <p>7 A That's the same question you just 4:17:05PM</p> <p>8 asked, as far as I can tell.</p> <p>9 Q Have you reviewed any of the 4:17:20PM</p> <p>10 deposition transcripts in this case?</p> <p>11 A No, I have not. 4:17:23PM</p> <p>12 Q Have you reviewed any of the documents 4:17:31PM</p> <p>13 that have been produced by any party other than</p> <p>14 Suffolk County in this case?</p> <p>15 MR. NOVIKOFF: Prior to the 4:17:40PM</p> <p>16 deposition?</p> <p>17 MR. GRAFF: Yes. 4:17:42PM</p> <p>18 A The correspondence that the village 4:17:43PM</p> <p>19 produced, the CS-150s and whatever, I have seen.</p> <p>20 Q Do you know whether anybody else in 4:17:58PM</p> <p>21 the Civil Service Department conducted any sort</p> <p>22 of investigation in connection with any of the</p> <p>23 matters alleged in the complaint? And that</p> <p>24 would be exclusive of counsel.</p> <p>25 A I would say -- how are you describing 4:18:11PM</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

Page 274	Page 275
<p>1 CYNTHIA DISTEFANO</p> <p>2 conducted an investigation? What we did was</p> <p>3 speak with Allison about that one particular</p> <p>4 allegation. Is that an investigation? I don't</p> <p>5 think so.</p> <p>6 Q Do you know whether anyone else 4:18:23PM</p> <p>7 conducted any sort of follow-up or inquiries</p> <p>8 regarding any other allegations in the</p> <p>9 complaint?</p> <p>10 A We looked to -- as I said, we looked 4:18:35PM</p> <p>11 to see whether any rights, Civil Service rights</p> <p>12 had been violated.</p> <p>13 Q Other than you, Mr. Schneider and 4:18:43PM</p> <p>14 Mr. Cohen, as far as you know, did anyone else</p> <p>15 look to see that within the Department of Civil</p> <p>16 Service?</p> <p>17 A I'm not aware of anybody. 4:18:51PM</p> <p>18 MS. ZWILLING: That's twice, and you 4:18:52PM</p> <p>19 still haven't asked if they made a</p> <p>20 determination and what that determination</p> <p>21 was.</p> <p>22 MR. NOVIKOFF: I'm getting there. 4:18:59PM</p> <p>23 BY MR. GRAFF: 4:19:04PM</p> <p>24 Q And what was the determination 4:19:04PM</p> <p>25 reached, if one was reached by you,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 Mr. Schneider or Mr. Cohen?</p> <p>3 A That the five people did not have the 4:19:13PM</p> <p>4 status that would have granted them any Civil</p> <p>5 Service protection.</p> <p>6 MR. NOVIKOFF: There's one more 4:19:27PM</p> <p>7 question you need to ask on that. Why?</p> <p>8 Because I'll ask it if you don't ask it.</p> <p>9 THE WITNESS: Section 75 of the Civil 4:19:35PM</p> <p>10 Service law grants protection against</p> <p>11 disciplinary action to people in the</p> <p>12 non-competitive class who have been</p> <p>13 continually employed for five years. These</p> <p>14 people all had breaks in service, so they</p> <p>15 did not have five years of continuous</p> <p>16 service.</p> <p>17 BY MR. GRAFF: 4:19:52PM</p> <p>18 Q What does a break in service mean in 4:19:52PM</p> <p>19 that context?</p> <p>20 A A cessation of employment and a 4:19:57PM</p> <p>21 re-employment.</p> <p>22 Q And is there any minimum duration of a 4:20:00PM</p> <p>23 cessation in employment that is a threshold for</p> <p>24 a break in service?</p> <p>25 A We have been told by the New York 4:20:12PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
Page 276	Page 277
<p>1 CYNTHIA DISTEFANO</p> <p>2 State Civil Service Department that one day</p> <p>3 would constitute a break.</p> <p>4 Q And to be clear, that isn't referring 4:20:21PM</p> <p>5 to an employee who takes a sick day or a day</p> <p>6 off, but an actual cessation of their employment</p> <p>7 in a position?</p> <p>8 A That's correct. 4:20:35PM</p> <p>9 Q Are there any exceptions to the break 4:20:36PM</p> <p>10 in service implications that you described?</p> <p>11 A I'm not aware of any. 4:20:44PM</p> <p>12 Q Do you know whether Section 5B of the 4:20:52PM</p> <p>13 Civil Service law is limited to employees of a</p> <p>14 public -- of a municipality whose status would</p> <p>15 entitle them to protections under Section 75, as</p> <p>16 you understand Section 75?</p> <p>17 MS. ZWILLING: Objection. 4:21:14PM</p> <p>18 MR. NOVIKOFF: Objection. 4:21:15PM</p> <p>19 MR. GRAFF: I'll reword it. 4:21:17PM</p> <p>20 MR. NOVIKOFF: I think anything past 4:21:20PM</p> <p>21 the first six words calls for a legal</p> <p>22 conclusion.</p> <p>23 BY MR. GRAFF: 4:21:25PM</p> <p>24 Q If an employee is not entitled to 4:21:28PM</p> <p>25 protections under Section 75, as far as you</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>1 CYNTHIA DISTEFANO</p> <p>2 know, would they be -- could they potentially be</p> <p>3 entitled to any protections under Section 75B?</p> <p>4 MS. ZWILLING: Objection. 4:21:41PM</p> <p>5 MR. NOVIKOFF: Objection. 4:21:42PM</p> <p>6 MS. ZWILLING: That clearly calls for 4:21:43PM</p> <p>7 her to interpret 75B.</p> <p>8 MR. NOVIKOFF: Although you've now 4:21:47PM</p> <p>9 given me a good issue to research for my</p> <p>10 summary judgment motion.</p> <p>11 MS. ZWILLING: As a matter of fact, I 4:21:55PM</p> <p>12 think the answer is pretty clear on the face</p> <p>13 of 75B. But then again, we're attorneys, so</p> <p>14 that's why we think it's clear. I cannot</p> <p>15 permit you to ask that question to the</p> <p>16 witness because she's not an attorney.</p> <p>17 MR. GRAFF: Just on terminology. Are 4:22:03PM</p> <p>18 you not going to permit the witness not to</p> <p>19 answer the question?</p> <p>20 MS. ZWILLING: That particular 4:22:10PM</p> <p>21 question, yes. If you want to try to ask</p> <p>22 some other questions with respect to that</p> <p>23 line of inquiry, I may or may not have</p> <p>24 objections.</p> <p>25 MR. GRAFF: I'm okay on that line of 4:22:18PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 278</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 inquiry.</p> <p>3 Before I conclude, if we could just 4:22:23PM</p> <p>4 take a break. I know we've marked some</p> <p>5 previous questions.</p> <p>6 MS. ZWILLING: Sure. I think we've 4:22:31PM</p> <p>7 already addressed some of them or</p> <p>8 essentially gotten past them, but if you</p> <p>9 want to take a few minutes, sure.</p> <p>10 (Whereupon, a discussion was held off 4:22:34PM</p> <p>11 the record.)</p> <p>12 MR. GRAFF: Then I believe subject to 4:24:01PM</p> <p>13 any follow-up to Mr. Novikoff's questioning,</p> <p>14 I'm ready to conclude, and I thank you for</p> <p>15 your time and patience with the questions</p> <p>16 today.</p> <p>17 EXAMINATION 4:24:10PM</p> <p>18 BY MR. NOVIKOFF: 4:24:11PM</p> <p>19 Q I will hopefully be very brief. 4:24:12PM</p> <p>20 Let's just go back to the last few 4:24:14PM</p> <p>21 questions that Mr. Graff asked you about the</p> <p>22 break in service issue. Was the break in</p> <p>23 service a result of the three of plaintiffs --</p> <p>24 I'm sorry, the five plaintiffs being seasonal</p> <p>25 employees?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 279</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A Some of it was, yes. 4:24:29PM</p> <p>3 Q What was the other basis? 4:24:30PM</p> <p>4 A There was some part-time employment 4:24:32PM</p> <p>5 interspersed also.</p> <p>6 Q Now, with regard to seasonal 4:24:37PM</p> <p>7 employment at Ocean Beach, if I understood the</p> <p>8 statute correctly, the regulations, it was two</p> <p>9 weeks before Memorial Day and to two weeks after</p> <p>10 Labor Day?</p> <p>11 A That's correct. 4:24:52PM</p> <p>12 Q So if I understand it correctly, the 4:24:53PM</p> <p>13 employment terminated on its own at the end of</p> <p>14 the second week after Labor Day, correct?</p> <p>15 A They have to tell us when that ends. 4:25:03PM</p> <p>16 Sometimes they tell us when they put them on</p> <p>17 that it's seasonal from A to B. Sometimes they</p> <p>18 send us a separate report when it's over.</p> <p>19 Q And when you say a separate report? 4:25:13PM</p> <p>20 A A new CS-150 with the termination 4:25:15PM</p> <p>21 date. Most places put it together on the one.</p> <p>22 Q To your understanding, did Ocean Beach 4:25:18PM</p> <p>23 send you a CS-150 at the end of the season to</p> <p>24 advise you as to the termination of the seasonal</p> <p>25 employees?</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 280</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A I think they gave us the whole date at 4:25:29PM</p> <p>3 the beginning.</p> <p>4 Q Now, under Civil Service law -- in the 4:25:33PM</p> <p>5 context of Civil Service, Suffolk County Civil</p> <p>6 Service, was the Village of Ocean Beach required</p> <p>7 to send to you a CS-150 with regard to any</p> <p>8 employees not rehired for the following season?</p> <p>9 A If they were terminated at the end of 4:26:00PM</p> <p>10 one season, we would not be looking for anything</p> <p>11 else unless there was re-employment.</p> <p>12 Q Let's use Mr. Fiorillo as an example 4:26:10PM</p> <p>13 here and only because he's here.</p> <p>14 If in the -- if at the end of the 2005 4:26:15PM</p> <p>15 season Mr. Fiorillo was terminated, which he</p> <p>16 would've been under the definition of seasonal</p> <p>17 employment --</p> <p>18 A Uh-huh. 4:26:29PM</p> <p>19 Q -- if he was not rehired for the 2006 4:26:29PM</p> <p>20 season, you would not expect to receive from</p> <p>21 Ocean Beach the CS-150 concerning Mr. Fiorillo?</p> <p>22 A That's correct. 4:26:40PM</p> <p>23 MR. GRAFF: Could I get that read 4:26:45PM</p> <p>24 back?</p> <p>25 MR. NOVIKOFF: Sure. 4:26:48PM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 281</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 (Whereupon, the requested portion was 4:27:00PM</p> <p>3 read back by the court reporter: If he was</p> <p>4 not rehired for the 2006 season, you would</p> <p>5 not expect to receive from Ocean Beach the</p> <p>6 CS-150 concerning Mr. Fiorillo?)</p> <p>7 BY MR. NOVIKOFF: 4:27:00PM</p> <p>8 Q You understood my question, correct? 4:27:01PM</p> <p>9 A Yes. 4:27:03PM</p> <p>10 MR. GRAFF: Ken, was your question 4:27:06PM</p> <p>11 with respect to at the end of that season or</p> <p>12 the beginning of the next season?</p> <p>13 MR. NOVIKOFF: I think my question was 4:27:13PM</p> <p>14 clear. I was referring, you know, to the</p> <p>15 beginning of the following season.</p> <p>16 MR. GRAFF: Okay. So they already 4:27:17PM</p> <p>17 would've received the CS-150?</p> <p>18 MR. NOVIKOFF: No. I think the 4:27:22PM</p> <p>19 question was clear. It was over no</p> <p>20 objection.</p> <p>21 THE WITNESS: They don't have to send 4:27:25PM</p> <p>22 us a list of the people they're not hiring.</p> <p>23 BY MR. NOVIKOFF: 4:27:29PM</p> <p>24 Q Exactly. Let's say hypothetically for 4:27:30PM</p> <p>25 the 2006 season, Ocean Beach interviewed 25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

1 CYNTHIA DISTEFANO
2 employees for the seasonal job of police officer
3 and they only hired 15. Would they need to
4 advise Civil Service of the 10 that were not
5 hired?
6 A No. 4:27:50PM
7 Q Mr. Graff -- in response to 4:28:02PM
8 Mr. Graff's questions, you referred to the
9 plaintiffs as being terminated or let go. Do
10 you recall that?
11 A Yes. 4:28:12PM
12 Q Are you certain as you sit here today 4:28:13PM
13 that the plaintiffs were terminated and/or let
14 go or could it have been that they were just not
15 rehired?
16 A I don't use "terminated" in any 4:28:22PM
17 derogatory sense. It's when the season ends, in
18 effect, they're terminated.
19 Q So when you used the word "terminated" 4:28:29PM
20 in response to Mr. Graff, you were referring, if
21 I understand you correctly -- and correct me if
22 I'm wrong -- that they were terminated at the
23 end of the prior season and not rehired for the
24 following season?
25 A I'd have to look at their individual 4:28:41PM
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1 CYNTHIA DISTEFANO
2 MR. NOVIKOFF: I don't need to go 4:30:11PM
3 through them. That's fine.
4 BY MR. NOVIKOFF: 4:30:15PM
5 Q Now, plaintiffs make an allegation in 4:30:17PM
6 this complaint that Ms. Sanchez and Mr. Hesse
7 conspired to, in sum and substance, injure the
8 plaintiffs and destroy their careers. Do you
9 recall reading those parts of the allegation in
10 the complaint?
11 A I do. 4:30:35PM
12 Q In any discussions or review of 4:30:35PM
13 whatever documentation you looked at or any
14 conversations you've had, did you ever discover,
15 in your opinion, evidence to suggest that
16 Ms. Sanchez was in a conspiracy with Mr. Hesse
17 to harm the plaintiffs?
18 A I did not. 4:30:52PM
19 Q In any of your discussions or 4:30:56PM
20 communications with any individuals at Civil
21 Service, or any review of any documentation, did
22 you ever come to the conclusion that Ms. Sanchez
23 did anything inappropriate with regard to her
24 job performance as it pertains to the five
25 plaintiffs in this lawsuit?
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1 CYNTHIA DISTEFANO
2 rosters to see if that is in effect when the
3 actual termination took place.
4 Q Let me just lay it out there. 4:28:48PM
5 Mr. Fiorillo -- and again, I'm only picking on
6 him because he's sitting right next to me -- he
7 was a seasonal police officer for Ocean Beach
8 for the 2005 season. He was not a police
9 officer, according to us, a seasonal police
10 officer for the 2006 season. So given your
11 understanding, Mr. Fiorillo was terminated at
12 the end of the 2005 season and was not rehired
13 for the 2006 season; would that be correct?
14 MR. GRAFF: Objection. 4:29:20PM
15 A I'd have to look at his roster record. 4:29:21PM
16 MS. ZWILLING: Do you want to use the 4:29:34PM
17 roster cards?
18 MR. NOVIKOFF: Sure. Let me see. 4:29:37PM
19 MS. ZWILLING: I don't know if I have 4:29:39PM
20 all of them here.
21 MR. NOVIKOFF: Let me take a quick 4:29:41PM
22 look.
23 MS. ZWILLING: Tom Snyder, Ed Carter, 4:29:45PM
24 and I'll look for the others as you go
25 through those. (Handing.)
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1 CYNTHIA DISTEFANO
2 A I did not. 4:31:13PM
3 Q In the complaint, the plaintiffs 4:31:24PM
4 allege the following. I'm going to read it.
5 "Upon information and belief, Sanchez was
6 responsible for appointing and approving the
7 hiring of the uncertified officers at the OBPB."
8 I'll break it down and ask you some 4:31:42PM
9 questions.
10 Was Ms. Sanchez responsible in any 4:31:44PM
11 manner with regard to the hiring of any officers
12 at Ocean Beach?
13 A No. 4:31:53PM
14 Q Would anyone at Civil Service be 4:31:56PM
15 responsible in any manner for the hiring of any
16 officers at Ocean Beach?
17 A No. 4:32:02PM
18 Q Was Ms. Sanchez responsible at all for 4:32:04PM
19 appointing any employees at Ocean Beach?
20 A No. 4:32:13PM
21 Q Would anyone at Civil Service be 4:32:13PM
22 responsible at all for the appointment of any
23 officers at Ocean Beach?
24 A No. 4:32:19PM
25 Q Was Ms. Sanchez responsible in any 4:32:21PM
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Page 286

Page 287

1 CYNTHIA DISTEFANO
2 manner for the approval of the hiring of any
3 officers at Ocean Beach?
4 A As reported on the CS-150, yes. 4:32:33PM
5 Q And describe in what context she would 4:32:36PM
6 be responsible for the approval?
7 A She would get the report on the 150 4:32:40PM
8 that a police officer was hired, and she would
9 have to be sure that all of those qualifying
10 tests had been passed.
11 Q And if they weren't, what would be 4:32:50PM
12 Ms. Sanchez's responsibility upon learning that
13 some of these requirements were not met, if any?
14 A To contact the village and tell them 4:33:01PM
15 and to mark that CS-150 as disapproved because
16 whatever was lacking would have been cited.
17 Q And to your knowledge, did Ms. Sanchez 4:33:09PM
18 do that?
19 A Yes, she did. 4:33:12PM
20 Q And to your knowledge, did Ms. Sanchez 4:33:13PM
21 do anything with regard to any approval,
22 disapproval of quote/unquote certified officers
23 that, in your opinion, did not follow with Civil
24 Service law, rules or regulations?
25 A No. 4:33:27PM
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Page 288

1 CYNTHIA DISTEFANO
2 Beach and/or getting those officers off of the
3 payroll?
4 A That's correct. 4:34:40PM
5 Q In any of your conversations or any of 4:34:43PM
6 your review of documentation, did you ever see
7 any written communication from Mr. Fiorillo on
8 the issue of uncertified officers at Ocean Beach
9 other than in the complaint?
10 A No. 4:35:01PM
11 Q How about with regard to any of the 4:35:02PM
12 four other plaintiffs?
13 A I don't recall seeing anything like 4:35:05PM
14 that, no.
15 Q Do you recall anyone that you would've 4:35:07PM
16 had communications with since 2001, concerning
17 Ocean Beach, ever hearing a complaint made by
18 Mr. Fiorillo concerning uncertified officers at
19 Ocean Beach?
20 A No. 4:35:24PM
21 Q Same question with regard to the four 4:35:25PM
22 other plaintiffs.
23 A No. 4:35:27PM
24 Q Did you ever receive communications 4:35:31PM
25 from any source prior to receiving the complaint
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1 CYNTHIA DISTEFANO
2 Q Now, you would agree with me that 4:33:32PM
3 Ms. Sanchez could not force the village through
4 her own actions to do or not do anything?
5 A That's correct. 4:33:42PM
6 Q Her role was to -- if I understand 4:33:43PM
7 correctly, to advise the village that there may
8 have been problems with certain hirings if
9 certain officers did not pass certain tests or
10 did not have the requisite Civil Service
11 requirements, correct?
12 A Yes. 4:33:56PM
13 Q And that was the extent of her role 4:33:57PM
14 with respect to notifying the village, correct?
15 A And to remind them to -- of what 4:34:04PM
16 needed to be done to be in compliance.
17 Q And to work with the village to either 4:34:10PM
18 ensure compliance going forward or to ensure
19 that these officers did not work for the
20 village?
21 A That's correct. 4:34:17PM
22 Q And if I understand your testimony, 4:34:18PM
23 the Civil Service Department was pleased with
24 the efforts that Ms. Sanchez undertook with
25 regard to either getting compliance from Ocean
TSG Reporting - Worldwide (877) 702-9580

Page 289

1 CYNTHIA DISTEFANO
2 that it was Mr. Fiorillo's position that
3 Ms. Sanchez conspired with Mr. Hesse to damage
4 him and his career?
5 A No. 4:35:48PM
6 Q Same question with regard to the four 4:35:48PM
7 plaintiffs.
8 A No. 4:35:51PM
9 Q Now, Mr. Graff asked you some 4:36:07PM
10 questions earlier this afternoon about hiring
11 and firing authority. Do you recall that?
12 A Yes. 4:36:16PM
13 Q Now, when you gave those answers that 4:36:16PM
14 you believe the mayor had hiring and firing
15 authority, what were you referring to?
16 A He's the appointing authority for the 4:36:23PM
17 village.
18 Q So under -- is it your understanding 4:36:26PM
19 based upon Civil Service regulations -- well, do
20 you equate appointing authority with hiring and
21 firing authority?
22 A Yes. 4:36:36PM
23 Q Could Mr. Loeffler have delegated the 4:36:36PM
24 hiring and firing authority to someone else at
25 the village and still maintained appointing
TSG Reporting - Worldwide (877) 702-9580

<p style="text-align: right;">Page 290</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 authority?</p> <p>3 A I'm not sure. 4:36:47PM</p> <p>4 Q Now, is appointing authority a defined 4:36:50PM</p> <p>5 term under Civil Service law?</p> <p>6 A Yes. 4:36:54PM</p> <p>7 Q And what is appointing authority 4:36:54PM</p> <p>8 defined as under the Civil Service law?</p> <p>9 A The ability to hire and fire. It's in 4:36:59PM</p> <p>10 Section 35, I believe.</p> <p>11 Q Great? 4:37:04PM</p> <p>12 MR. NOVIKOFF: Nothing further. 4:37:06PM</p> <p>13 MR. GRAFF: I have a few more 4:37:07PM</p> <p>14 follow-ups.</p> <p>15 MR. CONNOLLY: I was going to ask -- 4:37:09PM</p> <p>16 MR. GRAFF: Please. 4:37:09PM</p> <p>17 EXAMINATION 4:37:09PM</p> <p>18 BY MR. CONNOLLY: 4:37:12PM</p> <p>19 Q Would department heads have firing or 4:37:14PM</p> <p>20 hiring authority?</p> <p>21 A It depends on how you define 4:37:19PM</p> <p>22 department heads.</p> <p>23 MS. ZWILLING: I'm also going to ask, 4:37:22PM</p> <p>24 are you talking about anywhere within the</p> <p>25 county or are you talking specifically about</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 291</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 the village?</p> <p>3 MR. CONNOLLY: Talking specifically 4:37:29PM</p> <p>4 about the village.</p> <p>5 A No. A department head would not in a 4:37:31PM</p> <p>6 village.</p> <p>7 MR. CONNOLLY: Nothing further. 4:37:42PM</p> <p>8 EXAMINATION 4:37:43PM</p> <p>9 BY MR. GRAFF: 4:37:43PM</p> <p>10 Q Just a few questions based on the last 4:37:46PM</p> <p>11 set.</p> <p>12 If a seasonal police officer, such as 4:37:51PM</p> <p>13 the plaintiffs, at the end of the season in fact</p> <p>14 continued working throughout the year on a</p> <p>15 part-time basis, would the nature of their</p> <p>16 employment have to be reported at some point</p> <p>17 during the year on a CS-150?</p> <p>18 A Yes. 4:38:09PM</p> <p>19 Q And at what point? 4:38:10PM</p> <p>20 A When their status changed from 4:38:11PM</p> <p>21 seasonal to something else.</p> <p>22 Q And then at the start of the next 4:38:20PM</p> <p>23 season, if their part-time employment ended and</p> <p>24 they were not selected to work during that next</p> <p>25 season, would the discontinuation of their</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 292</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 part-time employment have to be reported on a</p> <p>3 CS-150?</p> <p>4 A Yes. 4:38:43PM</p> <p>5 Q As part of your follow-up after 4:38:46PM</p> <p>6 receiving the complaint, did you or, as far as</p> <p>7 you know, anyone else in the Civil Service</p> <p>8 Department conduct any investigation or make any</p> <p>9 inquiries with respect to the allegation in the</p> <p>10 complaint that George Hesse conspired with</p> <p>11 Allison Sanchez?</p> <p>12 MR. NOVIKOFF: Can you read that 4:39:09PM</p> <p>13 question back.</p> <p>14 (Whereupon, the requested portion was 4:39:27PM</p> <p>15 read back by the court reporter: As part of</p> <p>16 your follow-up after receiving the</p> <p>17 complaint, did you or, as far as you know,</p> <p>18 anyone else in the Civil Service Department</p> <p>19 conduct any investigation or make any</p> <p>20 inquiries with respect to the allegation in</p> <p>21 the complaint that George Hesse conspired</p> <p>22 with Allison Sanchez?)</p> <p>23 A No. I would say no. 4:39:32PM</p> <p>24 Q As far as you know, did Allison 4:39:36PM</p> <p>25 Sanchez ever approve CS-150s for officers who</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 293</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 were ultimately determined to have not, in fact,</p> <p>3 satisfied all of the requirements for the</p> <p>4 officer positions?</p> <p>5 A No. 4:39:54PM</p> <p>6 MR. NOVIKOFF: Objection to form. 4:39:55PM</p> <p>7 BY MR. GRAFF: 4:39:57PM</p> <p>8 Q So as far as you know, every CS-150 4:39:58PM</p> <p>9 that Allison Sanchez approved for a police</p> <p>10 officer at Ocean Beach was approved in</p> <p>11 accordance with Civil Service requirements?</p> <p>12 A Yes. 4:40:10PM</p> <p>13 Q Other than Mr. Fiorillo, do you know 4:40:16PM</p> <p>14 who the other plaintiffs in this case are?</p> <p>15 A I've seen the names. Whether I could 4:40:23PM</p> <p>16 recite the other four. Carollo, I think was</p> <p>17 one, Snyder, Nofi.</p> <p>18 Q Snyder and Nofi were, Carollo was not. 4:40:33PM</p> <p>19 (Continued on the next page to include 4:40:37PM</p> <p>20 jurat.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

1 CYNTHIA DISTEFANO
2 MR. GRAFF: But I'm concluded. Thank 4:40:38PM
3 you.
4 MS. ZWILLING: I have nothing. 4:40:39PM
5 (Time noted 4:40 p.m.) 4:40:40PM
6 4:40:40PM
7 CYNTHIA DISTEFANO 4:40:40PM
8 4:40:40PM
9 Subscribed and sworn to before me 4:40:40PM
10 this day of , 2009 4:40:40PM
11 4:40:40PM
12 4:40:40PM
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1 PROCEEDINGS
2 C E R T I F I C A T E
3
4 I, JUDI JOHNSON, RPR, CRR, CLR, a Notary Public in
5 and for the State of New York, do hereby certify:
6 THAT the witness whose testimony is hereinbefore
7 set forth, was duly sworn by me; and
8 THAT the within transcript is a true record
9 of the testimony given by said witness. I further
10 certify that I am not related, either by blood or
11 marriage, to any of the parties to this action; and
12 THAT I am in no way interested in the outcome of
13 this matter.
14 IN WITNESS WHEREOF, I have hereunto set
15 my hand this 17th day of June, 2009.
16
17
18 JUDI JOHNSON, RPR, CRR, CLR
19
20
21
22
23
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25
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1 PROCEEDINGS
2 INDEX
3 ATTORNEY PAGE
4 By Mr. Graff 6
5 By Mr. Novikoff 278
6 By Mr. Connolly 290
7 By Mr. Graff 291
8
9
10
11
12
13 INDEX OF DISTEFANO EXHIBITS
14 I.D. DESCRIPTION PAGE
15 Exhibit 1 30(b)(6) Notice 36
16 Exhibit 2 A document headed Police Officer 43
17 Exhibit 3 Police officer part-time/seasonal 65
18 Exhibit 4 A document headed sergeant 97
19 (police towns and villages)
20 Exhibit 5 A four-page document 103
21 Exhibit 6 Request for certification of 108
22 eligibles and this is also a
23 document from the County's website
24 Exhibit 7 LexisNexis of New York civil 137
25 service Civil Service Law Section 64
TSG Reporting - Worldwide (877) 702-9580

1 PROCEEDINGS
2 INDEX OF DISTEFANO EXHIBITS CONTINUED
3 I.D. DESCRIPTION PAGE
4 Exhibit 8 A Lexis printout of Civil Service 47
5 Law Section 65 titled
6 provisional appointments
7 Exhibit 9 Text of 75-b 155
8 Exhibit 10 Signature authorization form 190
9 dated March 7, 2003
10 Exhibit 11 Report of Personnel Changes 190
11 Exhibit 12 Suffolk County Department of 220
12 Civil Service Certification of
13 Eligibles
14 Exhibit 13 A letter 234
15 Exhibit 14 Bates document 3847 239
16 Exhibit 15 A letter dated August 6, 2007 245
17 Exhibit 16 Suffolk County Department of 249
18 Civil Service Certification of Eligibles
19 Exhibit 17 A letter dated October 6, 2005 252
20
21
22
23
24
25
TSG Reporting - Worldwide (877) 702-9580

ERRATA SHEET

NAME OF CASE: CARTER V. OCEAN BEACH

DATE OF DEPOSITION: JUNE 5, 2009

NAME OF WITNESS: CYNTHIA DISTEFANO

Reason codes:

1. To clarify the record.

2. To conform to the facts

3. To correct the transcription

errors.

Page _____ Line _____ Reason _____

From _____ to _____

Page _____ Line _____ Reason _____

From _____ to _____

Page _____ Line _____ Reason _____

From _____ to _____

Page _____ Line _____ Reason _____

From _____ to _____

Page _____ Line _____ Reason _____

From _____ to _____

Page _____ Line _____ Reason _____

From _____ to _____

CYNTHIA DISTEFANO

TSG Reporting - Worldwide (877) 702-9580

A	12:19	administered (1)	264:8 266:19 267:7	30:3 31:14,15,17,19
abbreviating (1)	act (2)	126:23	268:14 274:4 284:5	162:23 164:3,4,13
60:3	73:25 247:8	administers (1)	284:9 292:9,20	164:14,21 165:17
abbreviations (1)	acted (1)	49:17	allegations (19)	165:18,20,21 167:8
251:5	225:6	administration (2)	9:17 146:10 263:3	171:3 177:23
aberration (1)	acting (3)	130:4 238:14	264:4,20,21,22	193:18,21,23
89:16	1:11 103:3 257:4	administrator (5)	266:25 267:5,9,21	198:24 199:3 200:2
abide (1)	action (16)	32:10 114:4,9 219:13	271:2,6 272:15,16	200:3 201:7 202:16
140:10	129:9 131:20 151:4	219:17	272:19,24 273:4	202:18,22,24 203:3
ability (4)	156:17 166:2,6,8	advance (2)	274:8	203:9,19 204:11,25
12:18,24 162:17	177:6 197:13	201:2 260:21	allege (2)	205:2 206:2 207:12
290:9	202:10 214:4	advise (3)	268:25 285:4	207:15,18 208:2,11
able (13)	228:20,24 229:25	279:24 282:4 287:7	alleged (5)	208:15,22 209:4,6
12:7 30:9 32:21 39:5	275:11 295:11	advisement (1)	19:3 267:11 268:9,21	238:7,16,24 247:2,6
40:2 53:2 55:16	actions (6)	123:17	273:23	253:4
64:14 163:12,13	169:11 171:14 172:22	afforded (2)	Allison (20)	analysts (22)
213:11 246:18	177:9 210:3 287:4	154:13 265:7	1:14 163:24 172:23	24:19,20 27:9,21
253:13	active (1)	afield (1)	194:6 199:6 260:6	28:12 29:15,18 32:4
absence (2)	213:23	144:20	260:10 263:19,21	32:5,6 143:13
74:5 197:15	actively (1)	afternoon (1)	267:8 269:18	145:10,10 164:24
absences (1)	167:7	289:10	270:15 271:12,17	169:4 205:4 209:19
79:22	activities (3)	age (4)	272:9 274:3 292:11	209:22 210:18
absolutely (5)	171:25 172:6,7	78:2,4,6 228:4	292:22,24 293:9	238:8,11,21
21:6 22:10 23:7	actual (10)	agility (7)	Allison's (1)	analyst's (1)
160:15 243:7	47:7 84:5 146:10	45:17 78:14,20,20	199:23	203:22
abstract (1)	155:21 179:24	79:8 222:9 223:12	allotted (1)	Andrew (2)
145:16	203:18 206:18	ago (7)	146:8	15:10,12
abundantly (1)	245:5 276:6 283:3	9:15 19:11,25 54:6	allow (5)	and/or (3)
146:15	added (1)	57:11 186:23	61:9 76:21 106:5	96:2 282:13 288:2
academies (1)	258:17	190:15	161:12 217:8	angle (1)
76:24	addition (4)	agree (9)	allowed (4)	116:16
academy (18)	72:24 196:9 231:11	19:20 53:12 69:22	25:10 118:10 195:2	announce (1)
60:9,10,12,15 61:11	255:25	144:3 154:3 155:16	242:7	45:19
61:14,15 65:3 68:8	additional (3)	161:15 187:13	allows (4)	announcement (3)
68:10,13 69:17	45:12 63:25 231:12	287:2	44:13 73:24,24 75:14	45:21,24 49:12
70:18,25 73:9 76:14	address (16)	AGREED (3)	alternate (1)	annual (5)
76:23 234:3	6:7 53:18 75:3 82:21	5:2,6,10	110:19	55:9 84:9 209:19
accelerate (2)	83:8 193:10 202:24	agreement (1)	alternative (3)	210:5,9
125:15 127:2	203:6 231:3,5,11,13	52:11	196:16 215:5,22	answer (39)
accept (4)	231:15,18 255:17	agrees (1)	amendments (3)	8:7 33:7,16 38:20
81:12 195:16,23	266:25	134:19	32:16 34:13 143:3	39:7 41:17 50:20
196:21	addressed (9)	ahead (3)	amount (6)	57:22 58:11,12 59:7
acceptable (2)	34:22 54:3 82:22	20:5,6 156:7	82:8 84:4,6 225:13,24	59:13,17 62:12
196:17 201:17	178:10 256:9	akin (1)	246:25	64:12,15 67:11
acceptor (2)	257:13 265:20	55:10	amounts (2)	102:11 103:14
149:6 241:2	267:10 278:7	Alan (14)	207:3,3	106:15 118:7
acceptors (12)	addressee (2)	27:25 34:6 48:16	analyst (112)	138:18 145:21
91:17 124:3 130:9,12	234:18,21	163:20,22 174:20	11:4 13:20,25 14:5,6	151:18,20 157:12
149:5,11,16 234:6	addresses (1)	176:2 207:13	14:8,11,12,13,14,15	161:11 171:11,23
240:21 242:11,24	231:14	252:19 255:9	14:19,22 16:8,13,20	187:8 189:16
258:8	adequate (1)	261:13,20 263:9	17:8,11,13,25 18:8	195:19 213:11,13
access (1)	80:8	270:20	20:11,12,16,22,23	235:12 256:21
35:21	adhere (1)	Albano (1)	21:5,8,11,12,13,19	265:3 277:12,19
accommodate (1)	46:9	226:23	21:20,24 22:6,6,12	answered (3)
162:12	adjustments (1)	Albany (1)	22:18,19,22 23:8,9	8:7 188:25 272:5
accurate (2)	78:4	33:21	23:12,23 24:3,10,18	answering (1)
240:3,23	administer (4)	allegation (12)	24:21 25:24 26:2,14	7:21
accurately (1)	5:13 132:8 235:20	62:5 95:23 145:3	26:20 27:7,15,23	answers (5)
	236:8		28:6,7,11,17 29:14	7:17 134:18 137:9

213:15 289:13 anybody (11) 32:13 73:8 94:22 110:24 181:21 194:5 196:22 224:17 266:11 273:20 274:17 anybody's (1) 162:8 anymore (4) 73:5 133:14 224:19 251:18 anyway (2) 38:15 48:21 apparently (2) 134:11 141:15 appeal (3) 236:3,4,9 appear (4) 224:18 235:4 236:24 262:4 appearances (3) 3:2 4:2 79:21 appearing (1) 56:25 appears (1) 250:5 apples (1) 74:11 applicable (12) 47:3 63:10 80:12 99:8 134:2 153:17 202:9 202:20 221:18 240:8 246:5 250:20 applicant (1) 227:16 applicants (1) 44:8 application (7) 104:13,14,22 129:17 159:4 190:25 231:20 applications (1) 104:23 applied (14) 67:7,8,12 122:15 136:4,9 139:3,7,25 142:8 148:2,7 171:24 201:20 applies (4) 77:14 105:12 153:25 157:9 apply (14) 20:10 33:9 78:21 83:8 88:11 116:12 121:7 130:13 144:2 162:11 219:9 221:22 224:5 265:11	applying (2) 158:20 236:6 appoint (2) 113:18 257:23 appointed (17) 70:7 100:18 102:17 102:20 114:5 129:21 130:18 222:21 228:23 229:4 240:22 243:16,18,22 244:14 258:9,14 appointee (1) 71:17 appointing (47) 109:7,8,9,11,24 110:4 110:6,11,15,20 111:2,8,14 112:5,11 112:18 114:7,14,22 117:6,20 118:8,11 124:3 150:2 186:18 191:7,17,25 192:14 192:17 193:14 194:9 196:19 214:24 215:6,21 218:5,10,11 285:6 285:19 289:16,20 289:25 290:4,7 appointment (39) 66:15 68:20,21 69:3 71:7,17 102:18,23 123:20 124:7 125:21 126:6,24 127:5 129:4,9,13,20 130:5,13,16,22 131:2,12,23 133:4,8 133:9 140:22 233:23 241:9 242:8 242:18 243:2 257:21 258:4,19,20 285:22 appointments (19) 76:12 104:17 136:19 138:4,8,24 139:2,7 139:18 140:6,12,15 141:5 147:6,9,25 193:8 230:5 297:6 appreciate (4) 56:7 143:8 154:5 184:8 appreciated (1) 184:13 approach (1) 267:20 appropriate (9) 19:15,18 68:3 88:3 106:17 114:12 134:16 207:11 216:7	appropriately (1) 89:17 approval (7) 32:18 257:22 258:10 258:14 286:2,6,21 approve (6) 201:20 258:3,21,22 259:10 292:25 approved (16) 61:14 102:18 129:18 167:25 199:8,14,15 199:18 200:5 201:11 202:6,7 206:3 207:4 293:9 293:10 approving (1) 285:6 approximately (2) 128:3 185:17 April (2) 141:12,21 area (11) 10:8 16:22 17:24 20:20 22:24 24:25 25:2 124:9 146:3 250:11 268:8 areas (2) 18:5 21:3 arguably (1) 269:3 argue (1) 145:19 argumentative (1) 59:12 Arie (31) 6:17 7:11 8:19 10:6 17:15 35:24 38:9 39:11 40:19 42:17 49:25 50:7 57:24 61:7 64:12 69:13 73:18 76:4,20 102:12,25 118:22 125:23 127:14 136:11,24 143:14 155:8 184:21 215:8 216:11 ARIEL (1) 3:7 arises (1) 143:3 Arlene (4) 4:16 259:2,3 262:6 arrange (1) 171:13 articulates (1) 51:13 ascertain (1) 12:12 ascertainable (1)	134:23 aside (2) 114:3 249:17 asked (29) 10:10 22:2 46:14 47:15 48:2 68:6 73:3 82:5 93:23 106:12 135:3,10 144:12 157:15,24 159:18 171:21 183:9 189:4 190:15 194:12 233:13 249:14 270:16 272:4 273:8 274:19 278:21 289:9 asking (86) 7:16,19 40:23 46:3 47:5,21 49:5 51:11 51:18 54:12 57:8 59:15,18 61:22 63:7 65:2 68:4 70:17,22 70:24 72:10,12,18 73:12,23 74:3 75:15 75:24,25 76:10 81:19,22 85:14,19 86:18 87:25 92:15 94:23 95:10 103:14 106:7,10 127:9,10 127:14 132:21,23 133:23 134:4,11,17 134:20 135:2 136:5 139:12 140:4,16 142:4,21 144:21,22 148:11 156:24 157:6,8,23 158:2 161:6,8,20 172:18 172:24 182:7,14 183:5 188:9 195:11 200:24 216:9,15 233:15 241:19 262:13 268:3 269:24 272:18 asks (1) 145:7 aspect (2) 152:7 164:18 aspects (7) 135:20 213:8,12,14 216:16 217:9 254:6 assembled (1) 104:6 assign (1) 110:19 assigned (15) 22:14 26:14 29:16,18 106:24 193:18,21 193:25 194:3 198:24 207:18 238:20 239:4,6	248:12 assignment (3) 246:8 247:23 248:5 assume (3) 15:7 122:3 259:3 assumed (2) 38:14 63:9 assumes (3) 63:8 223:4 271:10 assuming (1) 240:24 assure (1) 57:14 asterisks (2) 222:3,4 attached (1) 45:23 attain (3) 91:13 236:2 243:12 attempt (1) 228:16 attempts (2) 34:20 235:25 attend (1) 15:9 attention (2) 37:6 245:16 attorney (18) 6:17 11:5,11,14,17 118:25 136:25 137:5 153:21 157:7 158:4,6 174:21,24 187:5 213:5 277:16 296:3 attorneys (9) 3:4,11,19 4:5,13 5:3 142:16 148:13 277:13 attorney's (4) 2:14 30:16 108:3 185:15 attorney-client (3) 8:11 259:4 261:23 Audit (1) 30:15 August (3) 226:10 244:23 297:16 author (2) 241:17,21 authorities (8) 109:7 110:7 111:9 114:5 117:7 118:8 186:18 218:10 authority (60) 109:8,9,12,25 110:4 110:12,15,21 111:3 111:14 112:6,12,19 114:7,14,22 116:20
--	---	--	--	--

117:2,13,20 118:11 124:3 150:3 152:6 191:6,7,17,25 192:15,17 193:14 194:10 196:19 207:10 208:24 209:12 214:8,14,17 214:24 215:6,9,21 215:25 216:6 217:25 218:6,12 229:24 237:22 289:11,15,16,20,21 289:24 290:2,4,7,20 authorized (12) 190:6,17,18 191:5,15 191:18 192:6 194:22,23 195:8,22 297:8 authorized (10) 5:12 77:10 89:25 109:18 190:23 195:10 196:16,23 215:4,21 authorizes (1) 215:13 authorizing (1) 191:6 automatic (3) 208:7,15,17 automatically (1) 93:19 available (8) 35:2,3 112:13 120:9 123:24 135:23 137:12 150:16 avails (1) 194:16 avenue (2) 3:5 159:21 avoid (1) 184:5 aware (23) 41:11 49:16 90:8 102:19 117:19 134:5 150:25 153:9 165:25 178:7 182:20 240:11 245:24 249:8,9,12 249:15 254:24 257:3,6 271:2 274:17 276:11 A.M (1) 2:4 <hr/> B <hr/> B (4) 1:12 3:11 253:3 279:17 Babylon (1)	30:13 bachelor's (2) 15:20,25 back (28) 19:10 31:13 35:25 45:4,6 62:25 63:24 71:21 77:8 96:23 107:10,12 111:20 145:19 146:21 167:5 194:21 196:5 210:15 223:8 230:18 259:8 265:24 278:20 280:24 281:3 292:13,15 background (2) 48:8,22 bad (3) 58:25 96:23 233:6 Balarezo (2) 196:13 218:15 bank (3) 15:2 155:14,15 barred (1) 235:14 base (3) 243:10,23,24 based (15) 51:20 55:16 58:21 67:22 100:21 118:10 187:6 189:5 198:19 211:15 229:7,9 242:2 289:19 291:10 basic (2) 90:14 237:22 basically (2) 32:20 132:24 basing (1) 105:15 basis (25) 55:14 56:11,15 58:20 81:16 82:17 83:13 95:25 106:2 125:8 132:9 161:5 170:3 170:16 171:17 173:11 174:4 189:8 202:12 211:8 212:24 223:10 253:23 279:3 291:15 Bates (11) 42:25 65:16 97:18 191:22 219:24 234:10 239:10,11 245:9 252:8 297:15 beach (113) 1:8,11 3:19,20 21:16 23:3 30:22 31:6	50:12 62:8 80:14 94:17,24,25 95:19 97:9,9 103:6 110:14 110:14,16,25 111:3 111:15 114:6 143:20 166:16,25 167:17,21,23 168:17 169:11,21 170:17,25 171:17 171:24 172:3,8,17 173:7,14 174:3 177:21 178:13 180:7,19 181:23 184:24 186:15 187:18 188:19 191:22 192:18 193:14,22 194:2,10 194:20 195:2,23 203:25 204:8 210:17,19 212:17 214:9 215:25 218:2 220:25 227:12 230:22 233:11 234:25 235:16 238:15,18 239:5,6 239:10 240:6 242:12 247:19 248:16 249:4 255:11 256:5,7,15 256:15 257:7 269:11,15 270:9 279:7,22 280:6,21 281:5,25 283:7 285:12,16,19,23 286:3 288:2,8,17,19 293:10 298:2 Beach's (1) 178:2 bear (6) 73:2 99:19 105:7 119:24 215:24 217:25 bearing (2) 71:6 239:10 bears (2) 106:12 107:3 becoming (1) 13:12 BEE (1) 4:3 beginning (4) 113:22 280:3 281:12 281:15 begins (1) 69:8 behalf (4) 37:16,22 180:17 191:17 belief (6)	58:21 156:19 183:11 189:6,9 285:5 believe (16) 19:11 26:21 28:9 35:18 43:20 126:16 138:4 170:24 212:7 233:20 241:12 245:11 262:10 278:12 289:14 290:10 believes (2) 156:15,16 best (5) 22:5 38:20 116:15 181:17 207:22 better (2) 41:15 54:3 beyond (9) 23:10,15 76:6,24 77:2 92:13 126:3 171:14 233:15 bind (2) 216:17 217:10 binding (1) 115:15 bit (3) 19:22 153:2 162:4 Black (1) 11:22 blank (1) 231:21 block (2) 238:5 255:16 blood (1) 295:10 blowing (7) 153:9,13 155:10,11 159:11 160:17 162:18 board (5) 108:3 110:20,22,25 186:18 bodies (1) 29:7 body (4) 32:21 57:9,10 142:24 bold (3) 191:19 227:2 235:3 bolded (1) 190:21 book (2) 202:2 260:24 borderline (1) 62:10 boss (3) 155:11,14,15 bottom (13) 37:6 43:11 90:14	98:19 191:24 192:9 194:23 198:18 205:7,15 228:24 235:2 236:19 bound (1) 140:10 box (8) 191:25 198:19 199:7 200:10 220:14 231:4,11,14 Boyle (1) 62:14 brand (1) 124:21 break (20) 8:4,8 36:17 163:10 190:4,19 213:7 243:8 244:20,21 257:17,18 275:18 275:24 276:3,9 278:4,22,22 285:8 breaking (1) 161:13 breaks (1) 275:14 breath (1) 167:12 Brian (1) 224:9 brief (2) 239:8 278:19 briefly (1) 249:18 broad (4) 155:10 173:17,24 268:22 broadly (1) 144:23 broadly (3) 115:8 120:25 272:18 broken (1) 61:20 Brookhaven (4) 17:3 18:2 21:2 30:14 brown (1) 11:22 bubbles (1) 113:6 budget (2) 32:11 122:4 built-in (2) 207:25 208:5 bunch (1) 50:22 business (3) 121:19 131:7 219:18 Butler (1) 224:9
--	--	---	---	---

bypassed (1) 224:18	293:18 carry (1) 202:17 carrying (1) 207:8 Carter (3) 1:3 283:23 298:2 case (50) 10:4,17,20 11:25 12:5 19:3,4 23:18 26:5 53:16 74:16 75:2 78:11 80:18,23 91:11 92:11 117:23 122:2 123:8 126:4 128:24 129:2 139:10,19 143:18 144:17 145:3,15 146:11 157:15 170:11 173:19 189:9 199:12 212:7 236:6 244:5 253:25 259:20 262:12,20 262:23 266:6 271:15,18 273:10 273:14 293:14 298:2 categories (4) 88:20 106:24 133:19 209:4 category (3) 119:14,17 155:10 Catherine (1) 211:21 causing (1) 34:2 CD (34) 36:20 42:24 65:14 71:22 77:8,14 78:8 79:11 89:22,22 90:13 97:17 100:5 103:19 147:3 155:21 190:16 191:21,24 192:6,8 192:21 194:21 195:3 197:2,18 215:5 218:13 219:23 232:18 234:8 249:17,20 252:8 cease (1) 185:14 century (2) 57:11 157:16 cert (2) 224:18 225:6 certain (14) 39:21 47:5 50:10,13 84:3 91:8 125:6 154:25 232:14	233:13 282:12 287:8,9,9 certainly (18) 38:12 40:4 52:16 53:20 57:3 58:3 62:20 63:16 103:8 135:22 145:13 152:18 156:3 164:21 182:24 209:15 216:13 269:12 certificate (11) 64:4 65:12 66:10 68:11 70:3,5 74:9 111:24 113:20 233:5 255:12 certification (33) 16:10 61:25 62:21 81:14 108:13,15 109:5 169:20 220:2 222:16 223:15 224:3 226:4,5,24 228:15 232:25 249:22 250:3,6 251:25 252:3 253:16 254:4,5,6 269:2,10,15 270:9 296:21 297:12,18 certifications (4) 32:8 223:19 226:19 226:22 certified (9) 2:18,19 50:12,14 99:16 128:9 186:9 192:10 286:22 certifies (1) 32:9 certify (15) 76:11 81:9 190:22 192:21 206:16 207:11 253:7,9,11 253:12,22,23 254:2 295:5,10 certifying (8) 206:4,7,25 207:23,24 221:12 253:17,20 cessation (3) 275:20,23 276:6 CF-150s (1) 200:16 chain (3) 164:12,15 204:12 chairs (1) 96:23 chance (6) 37:12 220:7 234:16 245:4 250:9 252:14 change (18) 14:18 18:2 20:21	24:13,15 25:6,8,12 25:21 129:14,16 197:19 198:7 200:18 201:10,21 203:15 213:25 changed (6) 18:7 21:7 24:10 28:21 143:5 291:20 changes (15) 33:25 82:14,15 190:11 191:2 192:7 192:10,15,20 197:8 197:13 207:24 214:5 260:4 297:10 characteristic (1) 91:2 characteristics (1) 74:6 charge (1) 81:6 charter (2) 118:16 121:2 Chayes (3) 162:21 163:18,22 check (5) 36:14 43:16 98:21 203:21 229:8 checked (5) 199:7,15,19 200:10 202:6 checks (1) 203:19 CHERYL (1) 4:24 Chester (1) 199:6 chief (11) 1:12 13:14,21 27:16 31:7 81:5 238:3 256:4,6 257:4,4 choice (1) 95:8 choose (4) 42:18 95:12 113:4 183:2 Christine (3) 162:21 163:18,21 circumstances (9) 85:11 86:5 112:14,17 112:21 124:14 237:12,15,19 cited (1) 286:16 citing (1) 189:20 city (2) 36:2 69:15 civil (410) 1:14 7:14 10:14,16	13:6 16:13,15 21:15 22:15 28:8,25 29:3 29:4,10,22 30:17 31:16 32:17,19 33:3 33:8,10 34:23 36:8 38:10 40:14 41:13 41:18,20,21 42:3,11 42:20,21 44:4,24 45:8,12,15 48:16 50:23 51:9 52:9 53:9,21 54:19 56:5 57:14 58:22 61:8,24 62:6 64:4 66:4 67:8 71:9,11,15 72:16,21 73:24 75:16 76:2,10 77:11 78:16 81:8,18 81:20,22 82:14 83:3 83:17 84:22 87:2,7 87:9,10,15,20,23 88:5,8,23 89:3,10 89:12,14,25 90:4 94:15,23 95:4,18 97:8 98:15 99:18 100:8,13 101:3,17 101:22 102:4,14 103:4 104:13,14,18 105:6,9,12 106:11 107:2,23,24 109:12 112:7,12,17,23 113:16,19,24 114:11,17,23 115:2 115:8,18,20 116:10 116:17,21,25 118:23 119:4,6,8,11 119:12,15,18,22,23 119:24 120:7,17,20 120:21,24 121:5,10 121:11 122:19,19 123:11,21 126:9 127:16 128:19,22 129:5,6,10 130:6,16 130:24 131:25 132:14,22,24 133:5 134:4,12,14,21 135:14,20 136:8,22 137:17,17,21,21 138:2,8 139:3,8,17 140:7,17,24 141:3 143:16,20,25 144:14 145:9,17 147:5,7,14,25 148:3 148:7,8,23 149:25 150:7 151:9 152:6 152:12,14,17 153:6 153:16 154:7,13,21 155:4,16 158:19 159:2,11 164:4 165:23 168:21 171:6 172:12,14
------------------------	--	---	--	--

175:6 176:15 177:6 178:15 180:8,18 181:22 182:2,5,7,13 182:14,22 183:22 184:11,15,17,25 185:6,16 186:5,8 187:7,10,21 191:4 191:20 192:11,13 192:19,22 193:4 195:8,12,14,16,23 196:17,21 198:6,15 200:16,21,23,25 201:9,22,22,24 202:2,3,8,18,19 204:25 206:7,18 207:9 209:11,25 210:4,8,18,20 212:3 213:20 214:2,20 215:11,22 216:7,12 216:14,19,21,24,25 217:3,6,7,9,18,22 217:24 218:8,18,22 218:23 219:14,20 220:2 221:10,17 225:2 227:12 229:11 230:13 231:18 232:11 235:23 239:25 240:4,18 241:21 243:12,22 244:12 245:18,22 246:4,10 247:24 248:2,11,17 248:19 249:5,22 251:14 254:13,18 254:25 255:3,18,24 256:2,16 257:8,12 257:14,23 258:11 259:9 260:20 261:3 261:6 264:22,25 265:7,10,14 266:5,7 266:11 267:11 268:13,16 269:19 270:8 272:17,25 273:4,21 274:11,15 275:4,9 276:2,13 280:4,5,5 282:4 284:20 285:14,21 286:23 287:10,23 289:19 290:5,8 292:7,18 293:11 296:24,25 297:4,12 297:18 claim (3) 143:15,17,24 claims (1) 212:11 clarification (1) 40:23 clarify (6)	13:14 34:3 152:11 159:18 216:20 298:7 clarity (1) 131:16 class (19) 29:23 73:15 90:18,20 91:3 113:2,19 115:6 117:12,19 118:9 122:12 133:5 212:17 219:20 233:24 246:16 248:12 275:12 classification (21) 13:5,9,13,15,16,22 16:14,16 27:16,17 30:11 31:8 32:2,3 32:12 33:19 75:4 218:19 219:14 238:13,19 classifications (1) 218:23 classified (10) 41:21,21 42:4 89:17 94:15 97:8 104:19 116:25,25 218:19 classify (1) 42:11 clear (26) 7:24 22:3 39:21 41:6 56:2 59:11 80:3 146:15 152:11 156:23 159:20 161:4 178:12,21 216:5 243:7 249:10 250:19 257:21 269:6,23 276:4 277:12,14 281:14 281:19 clearly (2) 95:15 277:6 clerical (14) 203:17,23 204:4,6,8 204:10,13,14,17,24 205:2,3 226:19,20 clericals (1) 205:4 clerical's (2) 203:20,21 clerk (6) 111:7 114:8 186:17 186:22 218:24 219:3 clerk/treasurer (3) 218:16,18 219:4 clients (2) 50:4 74:15 clock (3) 86:2,4 230:17	close (1) 100:15 CLR (3) 1:23 295:4,18 clue (1) 148:16 code (3) 228:20,24 229:25 codes (3) 105:3 106:19 298:6 codified (4) 134:9 136:8,10,19 Cohen (37) 165:2,6,12 166:14,24 167:16 168:8,15,24 169:9,18 170:4,8 193:25 194:4,8 253:4 255:13 256:8 263:10 264:5,14,18 266:17,25 267:16 267:20 268:2,18 269:8,12,14 270:11 272:13 273:6 274:14 275:2 colloquy (4) 146:16,23 147:2 184:6 color (1) 12:2 column (3) 82:21 197:21 200:14 combination (1) 219:8 combined (2) 219:5,7 combines (1) 219:12 come (11) 6:23 13:21 17:16 25:12,21 35:9 126:13 167:5 182:19 194:18 284:22 comes (9) 47:18 146:25 148:22 150:23 206:20,25 207:20 253:12,25 comfortable (1) 53:14 coming (2) 35:22 261:13 command (1) 204:12 commence (1) 162:25 comment (6) 38:19 62:23 75:22 144:5,7 246:14 commentaries (1)	141:24 commentary (3) 70:19 146:16,19 comments (1) 216:4 commission (1) 155:17 commissioner (1) 117:8 committee (6) 33:17,23 34:5,8,12,19 committing (1) 236:20 common (2) 125:4 208:21 communicate (5) 176:5 180:18 182:17 270:25 271:5 communicated (27) 49:5 57:16 58:2,18 67:25 68:2 82:10 144:15 175:16,18 175:21,23 176:6,9 177:2 181:22 182:15,23 183:23 183:25 184:23 187:19 188:10,18 189:11 223:21 270:3 communication (2) 115:22 288:7 communications (4) 269:9 284:20 288:16 288:24 comp (6) 212:7,11,13,18 213:19 214:3 comparable (1) 13:16 competitive (29) 28:10 29:23 73:15 90:15,17,20,23 91:2 99:3,6 104:16 113:2 113:19 117:12,19 118:9,20 122:12 133:4 176:19 212:17 213:24 227:9,10 229:10 233:11,24 246:16 248:11 complaint (28) 95:24 150:13 262:11 262:20,23 263:3 266:19 267:2,10,14 267:22 268:21 271:3,13 272:15 273:5,23 274:9 284:6,10 285:3 288:9,17,25 292:6	292:10,17,21 complaints (1) 153:8 complement (4) 79:20 80:7 81:3 82:25 complete (14) 61:11 66:16 67:17 70:15 71:18 73:13 75:10 77:3 109:20 112:6 224:10,16 225:15,24 completed (7) 75:11 165:19 222:15 223:22 225:5,9 229:22 completely (3) 12:25 75:4 136:12 completing (2) 67:17 69:8 completion (2) 70:5 71:7 compliance (7) 87:23 122:19 224:25 244:12 287:16,18 287:25 complies (4) 37:8 38:7 79:15 220:9 comply (7) 44:8,15 74:2 75:22 83:14 85:22 153:16 Compound (1) 173:8 Conceivably (1) 52:2 concern (1) 53:7 concerned (1) 265:4 concerning (9) 62:8 166:14 167:16 183:12 269:2 280:21 281:6 288:16,18 conclude (2) 278:3,14 concluded (1) 294:2 conclusion (7) 153:20 187:4 191:11 212:25 264:18 276:22 284:22 condition (1) 83:5 conditions (4) 79:19 80:6 82:25 83:12 conduct (7) 49:22 54:21 120:23 121:11 153:17
--	---	--	---	--

292:8,19 conducted (6) 51:5 54:18 210:6 273:21 274:2,7 conducting (2) 56:11,17 confer (1) 203:8 conferences (1) 25:9 conferring (1) 191:15 confidential (1) 53:13 confidentiality (3) 52:11 53:3,6 confines (1) 41:3 confirm (1) 134:5 confirmed (1) 243:22 conform (1) 298:8 conformance (8) 22:15 102:23,24 253:13 254:3,19 255:5 269:19 conforms (1) 253:21 confused (1) 73:12 confusing (2) 94:3 116:2 confusion (1) 34:3 conjunction (4) 210:2 211:25 253:24 265:18 connection (12) 10:4 129:12 139:17 147:19 148:25 173:10 212:5 259:15 260:18 261:11 266:6 273:22 Connolly (10) 3:14 47:12 97:14 179:2 241:17 290:15,18 291:3,7 296:6 consensus (1) 264:19 consequence (1) 189:21 consequences (16) 180:20 181:24 182:5 182:8,9,12,15,22	183:22 184:2,24 185:4,6,12,25 188:20 consider (1) 235:18 consideration (5) 235:6,8,15 236:18,25 considerations (1) 55:24 considering (1) 178:22 consistent (11) 100:12 101:14,16 113:16 178:15 195:11 200:3 201:8 202:7,13 258:11 conspiracy (2) 62:7 284:16 conspired (4) 284:7 289:3 292:10 292:21 constitute (3) 149:15 206:14 276:3 constitutes (1) 156:16 constrained (2) 135:16 155:9 constraints (2) 162:17 196:15 constructive (1) 54:16 consult (3) 8:10 117:22,25 consulting (1) 83:21 contact (3) 84:16 170:24 286:14 contacted (4) 108:2,3,4 170:10 contacts (1) 171:13 contain (1) 67:5 contained (2) 54:13 127:15 contentious (1) 238:2 context (62) 8:15 9:4 26:12 44:4 44:12 46:7 47:3,19 49:5 56:12,18 58:8 60:11 68:19,23 69:5 70:13 90:16,20 93:4 98:25 105:8,20 107:5 109:8 115:2 115:13,24 123:20 134:3 149:4 157:19 186:15 203:16 206:6 210:12	212:16 216:8 218:14 220:23 221:4,9 222:13 224:6,14 228:22 235:9 238:15 240:23 247:16,24 248:2,4 251:10 253:10,17 254:14 255:3,21 275:19 280:5 286:5 contingent (1) 221:6 continually (1) 275:13 continue (1) 131:12 continued (7) 4:2 184:25 254:12,20 291:14 293:19 297:2 continues (2) 19:15 221:17 continuing (1) 185:8 continuous (1) 275:15 contract (1) 49:19 contractors (1) 49:22 control (4) 30:16 109:13 215:16 227:14 convenient (1) 79:12 conversation (21) 165:12 166:22 168:15 168:20 169:21,25 200:7 264:5,13,15 264:17 266:17 269:13 270:3,10,13 270:21,24 271:11 272:3,12 conversations (13) 165:5,9,15 166:14,18 167:15,19 168:12 261:20 263:14 268:19 284:14 288:5 conveyed (2) 193:2,16 conveying (1) 193:13 copied (2) 190:18 196:6 copies (3) 36:5,12 196:4 copy (9) 35:7,21 36:3 193:6	196:6 217:19 230:18,18 271:13 corner (2) 191:24 198:18 correct (28) 26:3,23 99:12 170:16 170:23 171:2,4,16 174:4 178:25 180:21 186:19 221:23 241:3 262:16 276:8 279:11,14 280:22 281:8 282:21 283:13 287:5,11,14 287:21 288:4 298:9 correcting (1) 181:25 correction (1) 171:7 correctly (5) 104:6 279:8,12 282:21 287:7 correspondence (2) 211:14 273:18 could've (3) 176:19,20,22 council (7) 60:4,8 64:22 65:5 66:12 72:5 255:12 counsel (6) 8:10 47:9,12 148:20 266:14 273:24 count (1) 131:4 Country (2) 4:6 30:19 county (166) 1:13,13 2:14 4:5,11 4:13 9:5 11:6,8,15 13:4,6 14:4,23 16:22 17:7 18:3,9 18:25 21:2 23:6 25:10 30:14,16 33:9 34:18,24 35:6 37:22 40:14 41:4,11,24 42:25 44:25 45:9 46:20,24 47:2,25 48:13 49:13 51:6,15 51:16 52:5 60:14,21 60:24 61:4,13,15,16 61:18,24 62:6 63:4 63:21 64:3,6 65:15 71:5 72:13,18,19,21 73:24 75:16 77:11 78:16 83:16 86:25 87:2 88:13 92:14 93:12 97:18 99:6,11 106:21 108:2 110:6 110:10,11 117:6	118:16 119:12,15 119:18,22,23,25 120:6,7,17,21,24 121:2,12 122:10,14 123:21 127:20,21 128:11 134:3,15 139:3,7,16 140:7 143:24 145:8,17 148:2,8 151:9 152:6 152:17 153:6,8,13 153:15 154:7,9 158:19 159:2,12,14 160:4,18 165:23 166:9 168:21 171:6 171:15,16 172:8,10 172:11 174:24 177:6 180:18 181:22 185:15,16 185:22,25 186:4,5 191:4 204:25 205:22 209:9,10 216:22 219:25 234:9 247:25 249:4 249:21 273:14 280:5 290:25 297:11,17 county's (9) 37:16 56:25 103:8,20 108:14,17 169:10 170:2 296:23 county-wide (8) 93:20 94:10,18 113:9 113:12 124:10 243:3,5 couple (3) 190:20 203:14 249:19 course (13) 8:9,21 33:20 60:7 61:3 63:3 64:5 67:12 121:19 122:25 146:20 158:17 259:5 court (22) 1:2 5:15 7:18 9:13 36:19 42:23 45:6 62:25 65:13 79:21 96:15,17 97:16 107:12 137:13 190:15 219:22 234:7 254:10 262:12 281:3 292:15 COURTNEY (1) 3:10 courts (1) 139:24 cover (1) 8:11 covered (2)
--	---	---	---	--

242:22 257:20 covering (1) 140:17 covers (1) 39:22 create (4) 32:14 121:10,13,18 created (4) 49:13 94:6 122:22 131:24 creates (4) 53:9 121:23 122:8,17 creation (1) 33:23 credits (2) 15:23 16:4 crime (1) 155:18 criteria (10) 201:16,19 202:15 207:2 208:18 236:16 237:13,18 258:2,6 cross-check (6) 203:22 208:2,7,19,25 209:13 cross-checks (2) 208:9,16 CRR (3) 1:23 295:4,18 CS (1) 205:15 CS-150 (22) 197:5 198:9 200:17 201:21 203:16 205:13 207:4,17,24 212:10 260:3 279:20,23 280:7,21 281:6,17 286:4,15 291:17 292:3 293:8 CS-150s (5) 206:14 253:24 254:5 273:19 292:25 current (8) 13:3 31:25 98:20 128:4 141:11 143:4 205:9 238:22 currently (3) 27:19 188:17 239:4 cutoff (2) 149:19 198:16 cutting (1) 135:21 CV (1) 1:7 CW (1) 15:20 Cynthia (299)	1:18 2:13 3:1 4:1 5:1 6:1,2,9 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 80:1 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1 121:1 122:1 123:1 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1 134:1 135:1 136:1 137:1 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1 148:1 149:1 150:1 151:1 152:1 153:1 154:1 155:1 156:1 157:1 158:1 159:1 160:1 161:1 162:1 163:1 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1	203:1 204:1 205:1 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1 235:1 236:1 237:1 238:1 239:1 240:1 241:1 242:1 243:1 244:1 245:1 246:1 247:1 248:1 249:1 250:1 251:1 252:1 253:1 254:1 255:1 256:1 257:1 258:1 259:1 260:1 261:1 262:1 263:1 264:1 265:1 266:1 267:1 268:1 269:1 270:1 271:1 272:1 273:1 274:1 275:1 276:1 277:1 278:1 279:1 280:1 281:1 282:1 283:1 284:1 285:1 286:1 287:1 288:1 289:1 290:1 291:1 292:1 293:1 294:1,7 298:4 298:24 C-H-A-Y-E-S (1) 162:21 <hr/> D <hr/> damage (1) 289:3 date (45) 14:9 36:23 43:5,15 65:21 70:6 97:24 98:18 103:24 108:19 137:23 147:10 155:25 190:9,12 195:21 200:12,18 201:2,3,6 205:21 220:4 226:7 226:9,13,16 227:21 227:22,23 228:25 229:3,25 234:13 239:13 244:25 249:24 250:17 251:19,24 252:12 261:17 279:21 280:2 298:3 dated (12) 43:12 141:10 190:7 194:22,24 233:8 244:23 250:4	252:10 297:9,16,19 dates (2) 200:14,15 day (14) 17:16 19:24 20:3 69:16 155:2,3 276:2 276:5,5 279:9,10,14 294:9 295:15 days (8) 74:19 86:9 130:10 131:8,20 252:2,3 262:25 day-to-day (1) 26:13 deal (3) 146:24 155:17 218:10 dealing (1) 54:2 deals (1) 95:24 decades (1) 23:17 decide (1) 115:16 decides (1) 196:19 decision (10) 34:4 47:22 48:14 56:22 59:6 95:25 215:13,17 236:17 262:3 decisions (1) 205:5 deem (1) 81:11 deemed (1) 13:15 Deer (1) 231:3 defend (2) 96:5 147:21 defendant (1) 144:17 defendants (2) 1:16 10:22 define (9) 44:23,25 45:7,9 51:24 114:18 140:22 218:5 290:21 defined (6) 46:12 84:12 118:13 154:25 290:4,8 defines (2) 123:12 135:14 defining (1) 45:13 Definitely (1) 31:7	definition (7) 83:23,24 105:9,11,12 105:13 280:16 definitions (2) 114:17 155:5 definitively (1) 117:22 degree (3) 15:20 16:2 103:3 delegated (1) 289:23 delegation (2) 191:5,9 demonstrate (1) 237:18 department (139) 1:11,14 3:21 4:11 13:7 17:2,5,7 23:7 24:17 30:14,15,18 32:11,13 33:12,13 41:13 48:2,17,19 49:3 57:14,16,19 63:7,17,20 64:2 67:8 69:16 72:17,20 77:11 81:6,18 83:7 83:17 89:25 90:4 101:4,10,19 102:5 105:16 107:23,25 108:5 110:7,8,11 112:22 114:18,21 114:23 117:5 121:5 121:10 128:12 134:3 136:4 139:4 140:7 142:9 143:12 143:25 145:9 148:2 148:8 149:25 150:8 152:7 153:6,15,18 160:10 161:19 164:5,6 165:23 166:11 168:4 172:12,14 174:15 176:21 177:12 182:2 184:11,16 185:16 191:4 192:13,19 198:15 201:9 202:21 209:12,25 210:5,9 210:19 212:3 219:25 221:11,16 227:7 238:9 248:18 249:4,21 250:16 255:17,23 256:5,7 257:12,23 259:9 263:6,8,20 264:23 265:15 266:5,12 268:17 273:4,21 274:15 276:2 287:23 290:19,22 291:5 292:8,18
--	---	---	--	--

297:11,17 departments (10) 18:9 20:25 23:5 42:8 63:12 72:11 81:11 118:16,17 238:17 department's (1) 48:18 depends (5) 75:13 125:2 237:16 247:4 290:21 depleted (4) 79:21 81:3 83:2 205:8 deposed (1) 6:19 deposition (28) 1:18 2:13 5:11 6:21 7:9,10 11:6,12 62:13 97:4 103:12 115:24 135:18 138:2 147:21 162:12 258:25 259:15 260:7,10,18 260:21 261:8,12 262:5 273:10,16 298:3 depositions (2) 103:6,17 DEPUTY (1) 1:12 derogatory (1) 282:17 describe (4) 23:22 24:14 90:19 286:5 described (8) 37:16 86:6 88:12 172:6 173:22 195:24 271:12 276:10 describes (5) 118:16,17,19 252:22 255:3 describing (1) 273:25 description (3) 115:5 296:14 297:3 designate (1) 114:13 designated (6) 191:16 196:16 204:4 204:5,7,10 designation (1) 222:17 designee (3) 18:22 56:25 136:5 desist (1) 185:14 desk (2) 35:4,23	destroy (1) 284:8 detail (2) 49:14 143:5 detailed (1) 33:11 details (1) 45:18 determination (8) 37:21 149:20,24 201:10 202:12 274:20,20,24 determine (8) 52:19 117:22 192:20 195:3 197:18 199:2 246:24 258:3 determined (6) 125:9 149:9 188:16 188:23 223:6 293:2 determines (4) 47:5 81:2 109:14,16 determining (1) 201:20 developments (2) 144:13,14 devises (4) 45:25 46:4 47:2,7 die (1) 127:22 dies (1) 251:16 differ (1) 140:23 difference (4) 66:23 67:4 68:20 91:25 different (30) 22:18 24:5 26:22 41:2 41:4 42:18 50:8 66:19 67:6 77:13,19 77:24 78:11 83:19 87:12 88:24,25,25 106:23,24 110:4 123:13 132:10 135:13 189:6 231:23,25 238:16 247:21 253:17 differently (1) 75:7 differs (1) 213:13 difficult (3) 76:4 208:22 255:2 difficulty (1) 122:4 Dime (1) 15:2 direct (3)	164:7,24 245:16 direction (3) 41:12 71:6 83:3 directions (2) 49:20 232:8 directive (1) 115:9 directly (5) 35:24 161:7 164:18 200:13 230:6 director (14) 13:5,9,12,16 27:17 28:2 30:11 32:2,12 33:20 117:7,9 209:15 238:4 disagree (1) 103:9 disagreeing (1) 52:18 disapproval (1) 286:22 disapprovals (5) 170:3,17 171:17 173:11 174:5 disapprove (1) 201:21 disapproved (4) 169:2,24 201:11 286:15 disciplinary (5) 165:25 166:6,8 210:2 275:11 discipline (2) 56:4 210:13 disclose (1) 55:23 disclosed (1) 162:8 discontinuation (1) 291:25 discover (1) 284:14 discuss (11) 167:2 168:7,23 169:4 263:2,7,11,13 267:9 267:19,24 discussed (18) 157:17 168:4 169:8 169:17 170:4,7 172:2 180:7 255:13 263:5,17,19 264:4 267:6 268:3 270:8 272:8 273:3 discussing (3) 54:25 265:13 269:14 discussion (12) 64:17 89:19 131:14 138:6 179:25 190:2 260:12 265:9,22	266:18,24 278:10 discussions (4) 266:4 272:23 284:12 284:19 dismissal (1) 265:5 dismissals (1) 197:15 dispatcher (7) 40:9,24 41:14,19,24 42:13,15 dispute (2) 74:14 188:5 disputed (2) 62:16 103:2 disregarded (1) 133:18 disruptive (2) 141:25 142:4 dissertation (1) 145:16 DiStefano (354) 1:18 2:13 3:1 4:1 5:1 6:1,2,9,15,16 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1,18,19 18:1 19:1 20:1 21:1 21:21 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1,22,25 37:1 38:1 39:1,25 40:1 41:1 42:1 43:1,4 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1,20 65:1,19,23 66:1 67:1 68:1 69:1 69:22 70:1 71:1 72:1 73:1 74:1 75:1 76:1 77:1 78:1 79:1 79:23 80:1,10 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 89:6,22 90:1 91:1 92:1 93:1 94:1 95:1 96:1 97:1,23 98:1,3 99:1 100:1 101:1 102:1 103:1,23 104:1 105:1 106:1 107:1 108:1,18,23 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1 119:1 120:1	121:1 122:1 123:1 123:19 124:1 125:1 126:1 127:1 128:1 129:1 130:1 131:1 132:1 133:1,3 134:1 135:1 136:1,17 137:1,14,22 138:1 139:1 140:1 141:1 142:1 143:1 144:1 145:1 146:1 147:1,9 147:23 148:1,25 149:1 150:1,11 151:1 152:1,23 153:1 154:1 155:1 155:24 156:1,3 157:1 158:1 159:1 160:1 161:1 162:1 163:1,11 164:1 165:1 166:1 167:1 168:1 169:1 170:1 171:1 172:1 173:1 174:1 175:1 176:1 177:1 178:1 179:1 180:1 181:1 182:1 183:1 184:1 185:1 186:1 187:1 188:1 189:1 190:1,8,11,14 191:1 192:1 193:1 194:1 195:1 196:1 197:1 198:1 199:1 200:1 201:1 202:1 203:1 204:1 205:1 205:25 206:1 207:1 208:1 209:1 210:1 211:1 212:1 213:1 214:1 215:1 216:1 217:1 218:1 219:1 220:1,3,6 221:1 222:1 223:1 224:1 225:1 226:1 227:1 228:1 229:1 230:1 231:1 232:1 233:1 234:1,12,15 235:1 236:1 237:1 238:1 239:1,12,15 240:1 241:1 242:1 243:1 244:1,24 245:1,3,21 246:1 247:1 248:1 249:1,23 250:1 251:1 252:1,11,14 253:1 254:1 255:1 256:1 257:1 258:1 258:24 259:1 260:1 261:1 262:1 263:1 264:1 265:1 266:1,3 267:1 268:1 269:1 270:1 271:1 272:1 273:1 274:1 275:1 276:1 277:1 278:1
--	---	---	--	--

279:1 280:1 281:1 282:1 283:1 284:1 285:1 286:1 287:1 288:1 289:1 290:1 291:1 292:1 293:1 294:1,7 296:13 297:2 298:4,24 distinction (4) 42:8 66:18 100:22 269:23 distribute (1) 36:5 district (5) 1:2,2 30:16 106:21,22 districts (4) 18:9 30:18 105:4 106:6 divided (2) 24:17 32:7 division (9) 28:23 32:3,8 33:13 122:18 223:19,19 238:6 239:2 divisions (2) 238:8,10 dock (1) 39:9 doctor (2) 54:20 55:9 document (88) 37:3 38:6 40:5 42:24 43:3,8,8,14 45:22 49:13 51:11,13,20 53:2,21 54:14 55:19 60:11,16 65:15,24 67:3 79:25 83:22 97:17,21 98:4,18 103:20,22 104:4,7 104:11 106:4,15 108:8,11,12,14,16 108:24 109:2 123:15 137:15 138:21 141:10,15 147:3,24 156:4 190:16 191:22,23 192:4 195:4 197:3 197:25 198:19,20 200:12 205:7,25 206:3 217:20 219:24 221:24 227:20 229:7,16 230:11 232:18,21 233:8 234:9,17 236:6,19 239:9,11 241:21 245:4 252:4 252:8 296:16,18,20 296:23 297:15 documentation (10) 81:16,20,21,23 103:5	103:16 132:23 284:13,21 288:6 documents (32) 38:11,14 44:5,23,24 45:7,8,13 51:12,23 52:5,25 53:9,16,20 55:22 67:5 118:3 172:20 190:24 191:16,19 195:3 200:22 201:2 215:10 231:19 259:17,19,22 260:15 273:12 doing (5) 7:11 48:21,25 49:23 62:9 DONOVAN (1) 4:3 door (1) 36:2 doubt (1) 211:20 doubts (1) 50:15 draft (1) 32:14 drafted (1) 177:20 drafting (2) 33:14 66:19 drafts (1) 122:13 driving (2) 76:7 121:20 drop (1) 116:3 due (1) 79:21 duly (3) 6:4 243:21 295:7 duration (3) 83:4 111:18 275:22 duties (13) 19:9 22:11,17,19 23:11 29:13 31:18 31:25 100:22 219:16 248:7,12,13 duty (9) 181:3 190:24 246:7 247:23 248:5,8,8,18 253:12 <hr/> E <hr/> E (2) 295:2,2 earlier (11) 160:3 172:25 186:17 196:14 231:22 232:10 237:2	242:22 248:21 262:10 289:10 earn (5) 16:5 70:3 82:7 84:3 86:21 earning (3) 87:19 88:15,21 earns (1) 68:10 earth (1) 39:14 easier (1) 115:23 EASTERN (1) 1:2 Ed (7) 212:5,9 213:18 214:2 214:13 257:5 283:23 edition (3) 205:7,9,23 education (2) 15:14,18 educational (2) 73:22 74:22 Edward (5) 1:3 211:23 256:4,6,11 effect (4) 5:14 91:20 282:18 283:2 effective (6) 200:14,18 201:2,3 228:25 229:25 effort (2) 269:22,22 efforts (7) 170:2,7,16 173:10 174:4 269:17 287:24 eight (1) 50:8 Eighteen (1) 72:2 either (24) 16:9 21:12 22:5 55:16 57:9 89:22 111:9,11 134:14,22 143:19 143:21 144:17 154:23 157:19 222:14 241:18 268:18 269:8 271:18 273:5 287:17,25 295:10 elected (2) 25:14 118:12 elections (1) 108:4 elements (1) 45:25	eligibility (1) 241:2 eligible (36) 32:9 90:25 91:11,12 92:12 93:12,14,20 94:11 97:10 100:18 113:3 123:24,25 124:8,15,17,21 125:20 127:9,11 128:4 130:8 131:19 131:24 132:4 133:11,17 149:10 149:18 191:2 241:8 243:11,15 244:18 258:7 eligibles (21) 90:25 108:13,16 109:5 111:24 113:21 130:23 149:2 220:2 222:16 224:3 226:5,6 228:15 249:22 250:4 251:25 252:4 296:22 297:13,18 eliminated (3) 235:5,8 236:18 Elmsford (1) 3:13 emergency (5) 80:6 81:12 82:25 83:4 83:12 emphatically (1) 147:16 employ (4) 100:4,6,12 185:8 employable (1) 86:6 employed (14) 14:21,24 81:25 82:6 100:17,20 157:11 167:7 168:20 169:10,18 170:8 186:14 275:13 employee (20) 74:6,8,8 102:6,7 113:5 117:11 135:12,15 144:19 154:16 158:25 186:25 197:14,17 206:15 212:18 248:11 276:5,24 employees (14) 74:25 94:17 153:13 165:10 180:7 210:17 257:6 269:18 276:13 278:25 279:25 280:8 282:2 285:19 employee's (1)	169:24 employer (1) 157:4 employers (2) 32:10 151:5 employing (3) 102:22 178:13 181:24 employment (50) 8:21 9:4 22:13 34:18 40:11,16 41:10 69:25 79:17 80:11 80:12 82:18 83:25 85:2,4 100:7 102:23 111:19 140:18 158:18 167:20 168:25 169:3 185:2 185:22 190:25 202:20 253:8,10,12 253:19,21,23 254:2 254:6,12,19,20 255:4 260:2 275:20 275:23 276:6 279:4 279:7,13 280:17 291:16,23 292:2 enact (1) 152:19 endeavor (1) 12:13 ended (1) 291:23 ends (2) 279:15 282:17 enforce (7) 144:25 152:17,21 153:7 184:16 216:19,22 enforcement (6) 69:19 78:17 88:18 89:7 166:12 231:24 enforces (1) 152:13 enforcing (1) 217:7 engaged (1) 62:6 ensue (2) 182:10 188:20 ensure (3) 80:8 287:18,18 ensuring (1) 207:3 enters (1) 203:17 entire (7) 18:18 21:23 113:7,11 138:5 142:14 185:21 entirely (2) 159:21 162:15
---	---	--	--	---

entities (1) 267:2	26:16 44:21 45:2,9 46:2,11 49:18,22	exceedingly (1) 145:5	expected (1) 78:5	extent (15) 51:12 53:8 55:5
entitle (1) 276:15	event (3) 52:18 122:4 146:19	exception (1) 237:22	expects (1) 200:25	111:13 151:16
entitled (4) 57:4 147:5 276:24 277:3	events (1) 23:17	exceptions (9) 89:24 94:13 128:15 131:9 136:10 237:3 237:10 240:10 276:9	expediency (1) 19:21	152:16,20 153:5,25 154:20 158:2,5 164:15 187:6 287:13
entity (4) 15:5 157:10 198:21 229:23	everybody (4) 99:12 149:18 155:12 224:16	exclusive (2) 243:5 273:24	experience (3) 58:22 105:16 187:7	extenuating (2) 237:12,14
entry (1) 86:22	evidence (1) 284:15	Excuse (2) 203:4 232:12	experienced (1) 24:21	extra (1) 236:4
entry-level (2) 84:8 86:24	evolve (1) 258:15	executive (2) 25:10 57:9	experiences (1) 18:16	extraordinary (1) 237:18
equate (1) 289:20	exact (2) 14:9 189:19	executive's (1) 30:17	expert (7) 18:12,14 19:5,12 56:3 118:25 132:24	E-mail (1) 54:6
ERRATA (1) 298:1	exactly (5) 42:5 112:3 175:8 211:5 281:24	Exempt (1) 104:20	expertise (1) 266:12	<hr/> F <hr/>
errors (1) 298:10	exam (27) 47:18 50:24 51:4,5,7 51:8,9 54:22 55:7 55:15 56:23 124:22 125:9,16,22 127:2,6 127:8 128:21 129:22 130:19 131:4,13 176:20 235:22 240:19 242:3	exercise (3) 116:19 117:2,12	expiration (3) 226:7,13 251:19	F (1) 295:2
escapes (1) 11:18	examination (30) 6:11 20:17 26:2 28:8 28:16,24 29:9 31:16 44:14 45:19,21,23 49:10,12 52:10 55:7 90:23 91:9 124:6,20 125:12,13 126:14 126:23 129:19 243:19 244:19 278:17 290:17 291:8	exhausted (4) 124:2 127:8,10,11	expire (1) 124:18	face (2) 39:14 277:12
especially (2) 59:5 96:10		exhibit (41) 36:22 43:4 65:20 66:14 97:23 103:23 108:18 137:14,22 138:2 147:9 155:24 190:8,11 219:23 220:3 234:8,12 239:12 244:22,24 249:17,23 252:11 296:15,16,17,18,20 296:21,24 297:4,7,8 297:10,11,14,15,16 297:17,19	expires (1) 226:6	fact (14) 18:12,17 36:11 96:24 103:3 127:17 131:22 135:25 181:2 188:4 233:21 277:11 291:13 293:2
ESQ (4) 3:7,14,24 4:16		exhibits (3) 260:10 296:13 297:2	explain (21) 32:21 33:3 34:2 38:17 40:6 48:19 57:18 62:14 82:5 91:5 96:8 98:24 123:23 133:7 193:5 197:10 200:10 206:9 224:13 251:12 254:17	factor (1) 85:9
essentially (3) 13:17 38:10 278:8		exist (6) 51:24 52:21 124:12 126:12 240:6,13	explained (7) 25:23 26:19 69:23 116:21 240:11,18 251:21	factors (2) 26:9 93:13
establish (4) 105:20 124:20 151:15 246:12		existed (1) 233:4	explains (3) 51:3,13 55:19	facts (7) 19:2,7,9 62:4,15 145:15 298:8
established (17) 46:8 103:15 124:7 150:20 166:9 175:5 227:6,11,24 229:11 237:20 242:7,10,16 251:7,15,25	examinations (13) 28:23 33:18 54:18 55:11 122:18 128:23 130:25 223:18 238:3,6,13 238:25 240:17	existence (3) 45:14 103:7 124:15	explanation (1) 56:7	factual (1) 161:5
establishes (2) 32:8 106:9	examined (1) 6:4	existing (2) 124:24 251:16	explicitly (1) 157:5	fail (9) 226:3 235:3,4 236:24 240:19,21,25 241:6 241:7
establishment (4) 131:8,19,21 251:8	examinee (1) 47:16	exists (3) 111:14 125:20 136:2	explores (2) 107:7,14	failed (3) 130:14 235:22 236:11
estimate (1) 36:9	example (10) 94:7 135:3,10 233:6 233:12,14,16 235:14 236:10 280:12	expanded (1) 183:15	exploring (2) 107:20 176:11	fails (5) 130:10,25 131:3,5 224:17
ETF (1) 12:2	exams (9) 55:3 56:3,3 124:23,24 125:3,5 234:5 240:3	expands (1) 140:14	express (1) 158:3	failure (1) 143:25
Ethan (1) 196:12	exceed (1) 83:25	expect (5) 201:4,5,5 280:20 281:5	expressing (1) 270:6	familiar (10) 40:6 138:15 149:4 151:5,8,8 213:5 247:20 248:4 266:22
evaluated (1) 156:19		expectations (2) 165:22 201:8	expression (1) 266:20	familiarize (1) 137:5
evaluating (2) 26:10 237:14			extend (1) 99:20	far (29) 40:20 61:23 64:3 75:15 87:5,20 114:12 144:19
evaluation (16) 46:23 47:2 49:15 56:12,18 58:8 77:10 77:12,14,23,25 78:10,10,15 79:7 163:14			extended (1) 251:8	
evaluations (8)			extension (1) 251:21	

156:14 165:16 175:24 181:21 188:18 189:10 205:15 214:6 233:7 246:2 248:17 256:3 256:13,21 273:8 274:14 276:25 292:6,17,24 293:8 fashion (4) 20:6 37:24 132:18 159:24 federal (6) 7:13 9:13 18:24 139:24 162:11 262:11 felony (1) 236:21 Fifth (1) 3:5 figure (3) 128:8,8 203:9 file (4) 109:17,24 129:18 259:18 filed (3) 112:14,18 262:11 filing (1) 5:4 fill (5) 12:5 109:19 113:2 149:21 229:24 filled (2) 200:4 250:17 fills (1) 206:2 Finance (1) 30:15 find (5) 19:8 59:21 127:17 161:9 207:21 finding (1) 11:24 fine (7) 86:23 87:24 96:7 183:17 195:17 217:8 284:3 finish (2) 7:19,21 Fiorillo (10) 4:22 280:12,15,21 281:6 283:5,11 288:7,18 293:13 Fiorillo's (1) 289:2 FIORILO (1) 1:3 fire (11) 114:19 116:19 117:2 214:8,13,16 215:6	215:24 217:25 218:12 290:9 firing (8) 197:14 215:9 216:6 289:11,14,21,24 290:19 first (34) 6:4 8:7 15:19 17:13 25:22 32:20 48:25 49:11 84:24 94:18 104:3 113:20 130:4 138:25 151:16,23 168:15 185:4 195:21 220:20 222:8 224:10 240:24 243:2 245:17 252:20,21 253:2,5 262:19 263:5 264:24 271:6 276:21 FISHBEIN (1) 4:3 fitness (16) 44:20 46:6,21 55:4 77:23,25 78:20 79:6 79:8 90:22 234:24 235:4,25 236:9,11 236:13 five (13) 27:3 62:8 135:13 177:17 225:10 241:11 242:4,20 275:3,13,15 278:24 284:24 fixed (1) 201:19 Flower (1) 30:20 flows (1) 223:7 fluctuate (1) 204:20 focus (2) 146:12,13 focused (2) 28:4 143:8 focusing (1) 138:20 follow (4) 80:4 99:25 116:23 286:23 followed (1) 152:23 following (5) 79:18 280:8 281:15 282:24 285:4 follows (1) 6:5 follow-up (4)	274:7 278:13 292:5 292:16 follow-ups (1) 290:14 force (3) 5:13 35:4 287:3 foreclosing (1) 159:20 forever (3) 225:20 228:8 235:14 form (119) 5:7 10:5,7 15:18 23:14 32:24 33:6,17 41:15,25 56:13,19 61:6 64:8,25 66:20 72:14 73:6 74:10 82:17,20 84:15 85:6 91:15 99:23 100:15 100:25 101:24 102:9 104:24 108:12 109:15,19 109:24 111:14,24 112:6,20,22,24 113:3 117:18 118:6 129:8,15 132:5,13 140:9 141:6 155:5,6 160:9 166:4 169:12 169:22 171:8,21 174:6,11 178:18 180:24 186:20 187:23 189:14 190:7,17 191:8 192:21,23 193:17 194:11 195:6 196:23,24 198:20 199:9,12,16,21 200:4,4,8,20 201:12 205:9,16,23 206:19 207:5 208:20 212:22 215:5,20 216:3 218:3 222:17 222:20,24 223:12 223:23 225:17 229:13 231:21,23 231:25 234:17,20 234:22 243:14,25 249:19 250:5 252:6 268:23 269:16 271:21 272:20 293:6 297:8 formal (5) 15:22 16:9 166:8 217:20,21 formalized (2) 23:10 143:11 format (2) 138:20 190:22 former (1) 1:10	forms (4) 104:22 190:18 203:25 246:24 forth (12) 33:9 48:23 57:11 71:19 81:4 82:4,18 116:22 120:23 142:22 145:20 295:7 forward (4) 167:25 168:5,6 287:18 foundation (5) 67:10 152:15 170:19 171:25 181:2 foundational (2) 151:23,25 four (18) 32:5 84:25 92:7 104:9 124:17 126:21 224:25 225:10,14 225:19 241:11 251:13,15,24 288:12,21 289:6 293:16 fourth (1) 145:6 four-page (4) 103:19,22 104:7 296:20 four-year (1) 124:19 frame (6) 41:16 111:17 132:15 133:13 163:5 173:15 frames (1) 195:20 FRANK (2) 1:3 4:22 frankly (3) 40:2 135:17 158:11 free (3) 8:12 39:18 52:23 fulfill (3) 73:21 246:8,9 full (10) 20:19 59:23 86:16 239:20 245:17,17 248:7,9 253:5,5 fully (1) 162:13 full-time (25) 60:19,20 64:24 65:7 68:7 69:11 70:2,14 72:7 73:14 74:7,25 76:17 77:20,25 78:3 78:12,21 79:20 80:7 81:2 85:17,20	236:14 246:15 function (6) 73:20 197:10,12 202:20 234:22 248:9 functioning (2) 68:12 102:19 functions (2) 200:2 219:12 further (16) 5:6,10 20:16 49:14 157:14 177:6,25 216:10 228:19 235:5,8 236:18 261:19 290:12 291:7 295:9 fuss (1) 258:23 <hr/> G <hr/> game (1) 108:8 gender (1) 12:2 general (8) 10:12 41:5,8 47:16 167:19 168:7 171:22 264:21 generally (6) 51:4 54:17 167:22 172:2,7 179:12 generate (3) 132:4,6,9 generated (3) 141:16 206:22,23 geographic (1) 22:24 geographical (2) 29:20 41:3 geographically (2) 94:6,25 George (25) 1:12 3:11 95:16 179:19 180:5,21 181:2,6,18 188:4,17 188:24 210:21 211:13 214:16 229:19 256:22,24 257:5 259:10 267:8 270:17 272:6 292:10,21 getting (8) 76:8 100:15 143:9 176:11 268:5 274:22 287:25 288:2 GILLY (1) 3:3 Gino (3)
---	---	--	--	---

17:18,19 21:21 give (15) 55:25 58:15 125:6 127:24 132:7 134:18 142:14 145:16 160:22 161:12 162:17,19 192:13 217:11 242:14 given (20) 8:14,18,21 9:3 28:13 39:17 40:4 103:3 124:22,23,24 125:9 125:13 176:19 222:25 241:12 242:17 277:9 283:10 295:9 gives (2) 96:24 241:10 giving (3) 55:15 106:17 161:13 glanced (1) 262:24 glancing (2) 247:14,17 go (29) 15:13 25:11 32:17 35:11 46:15 50:17 55:8 61:18 64:16 68:14,16 69:17 74:16 107:20 138:10 150:4 154:4 156:7 157:13 164:5 178:19 213:3 234:3 265:8 278:20 282:9 282:14 283:24 284:2 God (1) 148:18 goes (9) 19:11 33:21 68:8 69:7 76:6 111:20 138:12 212:18 258:16 going (87) 7:17 18:15 19:22,24 20:2,3 25:2 30:9 35:14 37:10 38:3,15 39:2 40:2,22 42:21 55:17 58:15 59:9 62:13,14 63:24 64:14 70:19 73:8 76:21 79:11 88:7 90:13 92:5 93:2,4 94:20 95:15 96:11 101:13 103:9 108:21 115:14 116:2 123:6 135:8 136:12 141:23 146:2,8,16 149:23	150:13,17 152:24 155:13 156:5 157:11,13 158:12 159:17 160:24 162:5,7 163:2,7,8 171:20 172:19 173:3 178:14 183:3 184:6 189:15 193:3 212:23 216:2,23 219:22 235:20 251:3 254:11 258:22 261:25 263:24 265:2 277:18 285:4 287:18 290:15,23 gonna (1) 17:16 good (4) 6:16 58:25 241:15 277:9 gotten (4) 54:10 153:22 222:15 278:8 govern (2) 120:23 141:5 governing (3) 118:14,23 136:18 government (1) 15:5 governmental (1) 156:17 governs (1) 121:11 graduate (3) 15:23 16:4 234:5 graduated (1) 15:7 graduating (1) 15:12 Graff (392) 3:7 6:12,17 7:4,13,15 8:24 9:2 10:11 11:10,23 12:7,16 18:21 19:17 20:2,8 20:9 23:19,21 24:5 24:7 25:4,5 28:19 28:20 33:2 34:16 35:19 36:4,16,19,24 38:2,16,23 39:20 40:15 41:7,9 42:9 42:10,23 43:6,22,23 45:15 46:5 47:14,24 49:4 50:20 51:2,22 52:14,17 53:5,15 54:2,15,24 55:12,20 56:6,8,16,24 57:21 58:4,6,17 59:7,11 59:20,22 61:12 62:18,22 63:14,19	64:19 65:4,13,22 66:22 68:6 69:2,11 69:21 70:22 71:3,4 71:11,14 72:21,25 73:10 74:3,20 75:6 75:8,15,19,24 76:15 77:5,7 80:3,5,17,22 81:22,24 85:14,18 85:25 86:14,20 87:25 88:4,10 89:5 89:11,18,21 90:6 92:17,20 93:2,9,11 94:2,4,23 95:7,10 96:4,17 97:2,7,16 98:2,16 99:24 100:10,11 101:8,9 101:16,21 102:3,15 103:10,18 104:2 106:10 107:9,16,24 108:10,20 111:5,13 111:18,21,22 112:4 112:16 115:21 116:7,14 117:17 118:2 119:3 121:4,8 121:9,21,22 122:7 123:4,9,14,18 126:5 126:10 127:7 128:2 130:2 131:16 132:8 132:12 133:2,25 134:17 135:5,25 136:16 137:2,13,25 138:12,13,19 139:12 140:2,3,19 141:9,16,17,23 142:3,6,19 144:3,11 144:21 145:6,19 146:4,13,24 147:20 147:22 148:6,24 150:23 151:2,18,24 152:4,22 153:4 154:3,6 155:6,19 156:2 157:23 158:14,16 159:15 159:25 160:2,23 161:4,14,18 162:2 162:10 163:5,17 165:8 166:5 167:12 167:14 169:14,16 172:4,5,12,24 173:4 173:9,20,25 175:9 175:17 178:21 179:7,20,23 180:14 180:15 181:5,16 182:7,14 183:9,13 184:4,12,18,22 185:5 186:5 187:15 187:16 188:8,25 189:7,24 190:5,13 191:14 194:14	195:11,17,18 200:23 201:18 203:2 205:24 208:6 211:4,10 213:16,17 215:3,14,18 216:9 216:20 217:4,12,17 219:22 220:5 223:8 223:9 226:15 228:14 230:16 234:7,14 235:13 236:22 237:9 239:8 239:14 240:6 241:23,24 243:17 244:2,10,20,22 245:2,11,15 249:20 250:2 252:7,13 256:20 257:16,19 259:3,6 260:8,11,14 261:22 262:2,15,18 264:2,24 265:21,24 266:2 268:11 269:4 269:7 271:16,22 272:18 273:17 274:23 275:17 276:19,23 277:17 277:25 278:12,21 280:23 281:10,16 282:7,20 283:14 289:9 290:13,16 291:9 293:7 294:2 296:4,7 Graff's (1) 282:8 grant (1) 237:22 granted (2) 258:10 275:4 grants (1) 275:10 great (5) 20:8 36:16 51:22 76:16 290:11 greater (1) 152:20 grossly (2) 183:5,19 ground (1) 96:7 grounds (1) 183:4 guarantee (1) 135:12 guess (2) 18:14 228:11 guessing (2) 28:14 116:4 guidance (9) 154:8 192:14,19,25 193:15 194:9,13,14	194:17 guide (1) 150:3 guided (1) 182:2 guideline (8) 88:11,20,24 107:3 115:14,15,25 198:5 guidelines (37) 49:21 87:5,8,9,10,11 87:20,23 88:6,9 89:2 105:7 113:17 113:25 114:11,16 114:25 116:12,18 117:3,13 119:8,15 129:7 130:6,17 132:2 139:14 140:5 151:10 178:16 195:12 202:16 215:23 225:2 235:24 246:11 <hr/> H <hr/> hair (3) 11:22,22 12:2 half (10) 51:18 62:10 82:9 84:17 136:13 157:16 192:6 194:21,23 242:17 hand (2) 162:16 295:15 handing (10) 37:3 43:9 65:25 108:24 220:8,11 239:16 245:6 250:7 283:25 handle (2) 193:4 255:25 handling (2) 24:22 178:2 handwritten (3) 198:23 203:14 229:24 happen (3) 208:16 243:2 264:14 happened (2) 249:11,12 happens (2) 127:13 197:16 happy (3) 103:10 163:11 261:24 harassment (1) 62:11 hard (1) 232:3 harm (1) 284:17 HATTER (1) 4:3
---	--	---	---	---

Hauppauge (5) 1:18 2:2,16 4:15 6:10	95:21 259:10	51:18 62:9 136:13	impair (1) 12:23	271:17
head (6) 36:2 105:14 110:10 114:21 134:19 291:5	high (5) 15:7,9,10,12 234:5	hours (9) 84:24,25 85:12,20,21 86:16 146:9,20,23	impeding (1) 146:16	indicates (6) 198:2 227:21,23 230:12,21 238:6
headed (9) 43:2,3 65:16 97:19,21 108:12 197:22 296:16,18	higher (2) 15:13,18	huge (1) 128:11	implement (2) 152:17 153:7	indicating (1) 97:4
heading (4) 66:8 79:16 109:6 228:20	Highway (4) 2:2,15 4:14 6:10	human (1) 255:20	implementing (1) 151:14	indirect (5) 30:25 164:8,9,10,20
heads (4) 114:19 117:6 290:19 290:22	hire (26) 54:22 91:19,23 92:5,6 93:16,17,21 94:8,10 113:18 114:19 116:19 117:2 118:13 124:4 188:13 214:7,13,16 215:5,24 217:25 218:12 222:18 290:9	hurry (1) 196:5	implements (2) 47:18 152:13	individual (27) 42:13 46:25 47:15 63:12 64:2 72:11 91:20 107:4 116:6 159:3 179:13,16,21 180:2,4 198:21 210:17 213:11,15 216:17 222:19 228:2 229:22 230:24 236:11 258:12 282:25
hear (2) 7:25 30:24	hired (23) 68:7,14,18,21 69:6,7 70:7 81:17 83:13 91:12 94:8,17 95:19 101:12 102:7 170:21 178:24 224:11,25 229:4 282:3,5 286:8	hurting (1) 96:25	imposes (2) 53:10 74:23	individually (4) 1:9,10,12,15
heard (2) 143:17 211:25	hires (1) 69:14	husband (1) 17:23	improper (7) 62:11 135:6 136:14 156:16 157:21 183:19 268:12	individuals (7) 149:10 195:9 210:25 214:7 231:13 256:14 284:20
hearing (1) 288:17	hire/fire (1) 117:13	hypothetically (1) 281:24	incident (3) 159:11 160:13 266:10	individual's (1) 87:19
heart (3) 39:16,25 40:4	hiring (16) 69:3 178:22 197:14 215:8 216:6 232:8 281:22 285:7,11,15 286:2 289:10,14,20 289:24 290:20	hypotheticals (1) 106:18	include (4) 23:2,5 146:25 293:19	influence (1) 12:18
Heights (1) 15:11	hirings (1) 287:8	I	included (1) 266:19	informal (1) 198:16
held (18) 2:13 13:8 15:4 20:12 22:20 25:25 31:5 35:14 64:17 89:19 131:14 174:14 175:2 176:23 190:2 260:12 265:22 278:10	history (5) 40:13 90:3 142:14 143:18 209:25	idea (5) 58:25 59:2,2,2 166:20	including (2) 72:19 89:7	information (36) 35:4,23 36:6 42:21 48:24 54:8,13 63:8 76:8 129:11 146:10 154:8,12 156:18 157:25 160:22 161:12 162:5,18 163:12 177:25 178:6 181:18 183:11 189:5,9 193:7 206:12 207:7 210:24 211:16 223:5,7 231:6 262:7 285:5
help (7) 39:12 108:9 143:9 146:6 155:19 158:13 184:21	hit (3) 54:16 68:18 115:14	ideal (1) 132:16	inconsistently (1) 136:9	initial (1) 193:11
helpful (2) 142:2 150:19	Hofstra (1) 15:24	identical (1) 148:12	incorporated (11) 1:8 3:19 21:15 23:2 80:13 94:16 166:15 166:25 167:17 168:16 186:16	initiate (4) 185:13 187:21 208:25 209:13
helps (2) 69:13 218:14	hold (9) 10:25 13:11 14:3,10 27:19 125:9 133:20 212:14 242:3	identified (3) 25:2 137:25 272:24	increase (3) 197:22 198:3 258:20	initiated (3) 175:25 185:18 208:19
hereinbefore (1) 295:6	holding (2) 175:24 244:11	identify (11) 11:25 30:12 34:10 60:16 66:3 98:7 104:11 105:3 106:5 109:2 137:4	increases (2) 197:16,20	initiates (1) 33:22
hereunto (1) 295:14	holds (2) 116:24 117:11	identifying (3) 109:17,20,24	incumbent (2) 19:8 137:4	initiating (1) 185:24
Hesse (34) 1:12 3:11 47:13 95:16 103:2 143:22 179:19 180:5,22 181:2,6,18,25 183:7 188:4,17,24 210:21 211:8,13 214:16 229:19 256:22,24 257:6 267:8,12 270:17 272:6 284:6 284:16 289:3 292:10,21	hopefully (2) 146:14 278:19	identity (1) 109:11	indicated (4) 54:5 227:15 234:19	injure (1) 284:7
Hesse's (2)	hoping (2) 19:23 152:15	ii (1) 156:9		injured (1)
	hotel (1) 105:18	illegally (1) 186:13		
	hour (3)	imagine (2) 123:14 213:13		
		immediately (7) 13:12 14:24 15:15 68:15 114:6 224:11 225:11		
		impact (2) 222:18 268:15		

248:6 inquires (1) 159:10 inquiries (3) 274:7 292:9,20 inquiring (2) 135:19 144:25 inquiry (7) 10:8 25:2 82:10 159:21 248:17 277:23 278:2 INSERT (1) 12:14 instance (4) 94:18 160:11 193:24 232:16 instances (1) 88:13 instruct (3) 62:12 145:20 161:10 instruction (5) 23:10 143:12 192:14 192:18 194:14 insufficient (1) 80:8 intend (4) 41:7 85:9 89:12 115:7 intended (1) 269:5 interacted (2) 210:18 211:9 interactions (1) 211:2 interested (5) 149:13,14,14 162:14 295:12 interests (2) 51:6 213:3 INTERN (1) 4:24 internal (8) 42:7,22 89:2 121:13 121:16,17 214:22 215:9 internally (2) 42:18 149:25 interpret (8) 38:18 156:24 157:7,8 157:24 158:5 217:2 277:7 interpretation (2) 157:18 216:16 interpreted (4) 139:10,20,23 158:6 interspersed (1) 279:5 interval (1) 126:18	intervals (1) 124:25 interviewed (1) 281:25 interviewing (2) 29:2 120:12 introduced (1) 141:18 intrude (1) 261:22 investigated (1) 160:10 investigating (1) 247:7 investigation (12) 48:9,22 161:21 162:24 163:3 202:11,17 273:22 274:2,4 292:8,19 investigations (1) 160:16 investigatory (1) 160:20 involved (7) 159:3 160:13 164:21 173:19,21,23 211:19 involvement (4) 89:4 153:10 158:20 212:8 involves (1) 49:15 involving (4) 153:12 159:4 161:22 272:17 in-house (7) 120:13,14 256:10,16 257:2,7,13 in-person (1) 179:24 irrelevant (4) 18:19 59:3 61:23 183:5 isolate (1) 255:2 issue (25) 9:20,25 50:6,7 53:20 61:25 62:15,21 74:15 107:7,14 178:2,12 180:21 187:10 216:10 226:22 238:2 252:3 255:10 267:23,25 277:9 278:22 288:8 issued (2) 226:23 252:2 issues (21) 28:25 50:19 61:23 103:11 119:24	121:12 132:21 150:19 159:3 160:4 160:8,17 161:7 187:7 210:20 212:2 248:19 268:25 269:10,15 270:9 italicized (1) 235:3 item (5) 206:16 222:4,17,19 223:11 itemize (1) 267:14 items (19) 38:9 39:3 89:23 195:24 222:22,25 223:21 224:7,10,15 224:16,17 225:4,6,9 225:16,25 226:3 270:7 I.D (2) 296:14 297:3 <hr/> J J (1) 218:15 Jackson (2) 15:10,12 job (11) 1:24 60:18 66:4 98:8 115:5 119:19,21 120:21 149:7 282:2 284:24 Johnson (4) 1:23 2:17 295:4,18 join (3) 8:22 144:4,6 joins (1) 47:10 joint (1) 111:8 jointly (1) 263:14 Joseph (4) 1:4,8 3:20 248:15 JR (1) 1:9 judge (5) 6:21 62:14 135:8 144:10 158:9 judgment (3) 269:25 270:2 277:10 Judi (4) 1:23 2:17 295:4,18 July (4) 194:24,25 195:25 251:20 June (5)	1:19 2:4 226:16 295:15 298:3 jurat (1) 293:20 jurisdiction (53) 9:24 16:21 17:24 18:6 20:20 21:4,14 22:23 30:4,23 31:6 40:25 42:13 60:21,23 61:13 84:16 87:3,4 87:6,16 97:12 99:9 99:10,11,14 102:22 105:19 109:10 130:12 151:15,17 151:20 152:5 155:17 169:5 170:11 191:3 193:19,21 194:16 197:13 198:25 203:20 206:11,20 207:19 208:23 216:19,21 232:9 238:18 243:6 jurisdictional (2) 92:13 242:25 jurisdictionally (2) 94:5 95:2 jurisdictions (15) 22:14 24:23 29:16,19 30:12 41:2,12 42:12 88:24 122:15 128:13 159:13 169:3 206:24 238:20 jurisdiction's (1) 207:16 jury (1) 6:22 <hr/> K keep (5) 28:3 53:12 76:19 135:2 223:18 Ken (1) 281:10 KENNETH (1) 3:24 KEVIN (2) 1:4 3:14 key (1) 228:23 kidding (2) 148:4 159:5 kind (1) 69:9 kindly (2) 151:22,25 kinds (2) 85:8 193:7	know (186) 8:5 10:2,7,17 28:21 30:6,19 35:14,14,16 35:17,20 36:12,13 37:2,11 38:5 39:4,8 39:13 42:2 43:8,17 49:9 52:21 53:7,19 54:10 55:10,18 56:14 57:5,21 58:7 59:24 64:12,14,20 64:22 65:24 67:14 67:22 70:18 73:4 74:18 79:14 80:23 83:21,22 90:14 98:19 101:25 105:11 110:24 111:2 114:6,10 122:21 125:8 126:18 128:3,7,20 131:24 133:25 136:17 138:6,14 142:7,17,20 144:7 147:12 150:11 151:19 154:3 157:21 158:25 160:10 161:19 163:8,24 164:2 165:16 166:10 168:13,14 170:19 172:16,19 173:3,13 175:5,10,13,22,25 176:24 177:14,18 177:19 178:9 179:8 179:9,12,15,20 181:6,9,10,11,13,21 187:6 188:18 189:10,24 193:24 194:7 197:4 199:23 202:18 204:7,24 205:12 208:5 211:19,22 213:14 214:6,24 218:5 220:7,13 223:10,16 226:17 227:3 228:9 229:7,15,19 230:19 232:20 233:7 235:7 245:21 246:2,10,13 246:20 247:13,15 248:17 249:10 250:8 251:5 252:19 253:9 255:8 256:3,8 256:13,18 257:15 259:20 261:13,15 261:18 262:3 263:18 267:18 268:24 273:20 274:6,14 276:12 277:2 278:4 281:14 283:19 292:7,17,24
---	--	---	--	---

293:8,13 knowing (2) 208:21,22 knowledge (27) 18:16 19:7,10 58:21 67:23 68:3 129:3 177:3 181:15,17 185:20,23 189:5 210:16,23 211:4,8 230:9 233:22 241:20 247:14,21 248:15,20 249:2 286:17,20 knowledgeable (2) 37:15 39:4 known (1) 206:7 knows (8) 57:2 65:8 68:6 93:4 134:8 158:2 256:20 256:21 K.ROGERS (1) 1:10	126:9 132:3,15,22 132:25 134:13,15 134:21 135:14,20 135:22,25 136:3,7,8 136:14,22 137:17 137:21 138:2,8 139:2,6,10,16,20,21 140:11,11,14 141:20 143:16,20 144:14 145:2 147:5 147:8,14 148:2,7,16 148:23 152:14 153:25 154:21 155:4 157:16 161:13 162:9 166:12 184:17 186:8 192:22 201:22 202:19 214:20 216:14,17 216:25 217:3,7,10 231:23 241:22 251:14 254:13,18 254:19,25 255:3 261:3 265:10 266:8 269:19 275:10 276:13 280:4 286:24 290:5,8 296:25 297:5 laws (9) 116:11 118:13,22 127:16 142:13,25 201:25 258:11 268:13 lawsuit (10) 6:18 9:17 95:21 150:14 183:18 185:13,18,24 187:22 284:25 lay (2) 105:14 283:4 layoff (5) 120:8 121:23,25 122:14 123:12 layoffs (1) 122:3 lead (1) 163:9 learning (2) 271:6 286:12 leave (14) 12:4,8 36:15 83:6 115:12 197:15 211:24 212:5,9,14 212:18 213:19,22 214:3 led (1) 161:21 left (8) 43:11 164:5 166:10	188:14 198:18 205:15 226:25 255:16 leg (1) 266:20 legal (19) 105:2,4,8,10,20 106:14,19 107:5,6 107:13,18 153:20 157:7 187:4 191:10 212:25 216:15 231:11 276:21 legally (4) 52:7,8,19 102:20 legend (1) 228:24 legislative (1) 57:9 legislature (1) 30:17 legitimate (3) 10:8 76:5 230:5 length (5) 22:4 62:2 65:9 70:14 131:11 lesser (1) 128:12 letter (23) 90:25 149:13,17 178:8,9 179:5 189:18,20 234:11 239:16 244:23 245:5 252:10,17,22 253:3,25 256:9 257:10,11 297:14 297:16,19 letterhead (1) 255:16 letters (10) 149:23 150:7 171:12 172:15 177:10,13 177:20 189:22 220:15 231:16 letting (1) 261:18 let's (15) 28:3 34:5 46:15 50:17 110:13 160:23 161:14 192:8 210:15 243:8 244:20 268:10 278:20 280:12 281:24 level (7) 21:9 86:22 87:18 121:5 248:9 258:18 269:21 levels (1) 171:9	Levy (1) 25:14 Lexis (3) 147:4,7 297:4 LexisNexis (3) 137:16,20 296:24 liability (3) 186:12,24 187:20 liable (1) 187:2 liaison (2) 194:2,3 libraries (1) 35:15 library (2) 35:12 106:22 license (1) 232:16 life (2) 69:20 80:9 light (3) 189:10 248:8 250:20 limit (8) 8:19 78:2 86:7,8 146:19 216:24 227:25 228:7 limitation (1) 92:13 limitations (4) 79:16 80:10 83:7,9 limited (7) 94:6 95:2,13 97:10 124:9 133:9 276:13 line (19) 18:18 19:14 55:3 56:9 220:18,19 232:3,4 250:25 251:6 263:24 277:23,25 298:11,13,15,17,19 298:21 lines (2) 118:15 250:11 list (100) 39:3 68:8 90:25 91:12 91:14,17,25 92:2,7 92:12 93:12,14,20 94:6,11,18 95:2,13 97:11,13 99:8,13 100:18 102:17 109:4,10 113:3,7,9 113:9,11,13 123:24 123:25 124:7,8,9,10 124:15,20,21 125:20 127:8,9,11 127:22 128:4,6,9,14 128:16 130:8 131:8 131:19,21,24 132:4 132:6,9 133:11,17 149:10,15,18,22	218:11 220:20,24 221:7,12,19 223:15 224:14 227:5,5,23 229:20 230:20 231:8 232:23 240:21 241:2 242:6 242:9,13,16,25 243:3,4,5 250:12,21 251:8,13,14,16,23 252:4 258:7 281:22 listed (14) 79:4 190:23 191:19 197:21 221:15 222:2 224:20,24 231:5,14 232:16,22 233:3 250:15 listen (1) 54:10 listening (1) 40:18 listing (1) 40:5 lists (9) 32:9,9 81:14 91:11 124:17 149:2 191:3 224:6 247:18 literally (2) 36:3 240:23 litigation (1) 54:7 little (4) 30:20 105:2 228:19 232:3 live (5) 105:24 106:2,25 251:13,24 lived (1) 252:4 LiveNote (1) 2:19 LLP (3) 3:3,18 4:3 local (3) 115:19 128:12 231:8 locality (1) 127:19 located (1) 231:18 locating (1) 245:13 location (1) 107:17 Loeffler (13) 1:9 3:20 174:17,19 180:13,14,16 248:16,23 252:19 253:6 255:9 289:23 long (15) 13:8 14:15 36:8 54:11
---	---	---	---	---

70:13,17,25 71:17 71:24 88:16 211:24 242:4 247:10 267:15 268:15 longer (5) 25:11 72:6 223:22 225:14 254:2 look (26) 37:2 43:7,11 65:24 66:7 98:4 134:10 137:7 138:17 143:4 156:4 174:13 177:22 192:8 205:14 218:14 220:7 227:13 234:16 245:4 264:10 274:15 282:25 283:15,22 283:24 looked (12) 133:12 142:12 153:8 170:9 213:22 231:21 232:10 264:6 265:6 274:10 274:10 284:13 looking (13) 39:9 43:19 91:19 93:15 115:21 119:3 121:4 167:4 205:9 222:8 250:6 254:9 280:10 looks (7) 43:12 89:15 213:23 222:3 224:21 247:3 247:4 lose (2) 225:23 226:2 lot (3) 61:22 96:24 104:24 lots (3) 118:22 182:11 213:2 lower (1) 91:24 lunch (5) 36:17 190:4,14,19 217:19	maintains (1) 213:24 maker (2) 34:5 215:17 making (7) 48:20 135:8 160:25 188:15 198:22 202:12 231:7 man (1) 11:20 manager (1) 219:18 mandates (1) 254:18 manner (5) 154:25 192:25 285:11 285:15 286:2 manual (3) 121:23 122:22,24 manuals (8) 120:2,3,7,11,14,16,22 218:9 March (8) 14:17 190:7 194:22 194:25 195:25 196:5,7 297:9 mark (21) 36:20 42:24 59:20 61:21 65:14 97:17 103:19 108:11 137:14 146:5 150:17 155:21 158:9 160:23 161:14 190:5,16 219:23 234:8 249:20 286:15 marked (19) 36:21 43:4 65:19 97:22 103:23 108:17 137:22 147:9 155:23 190:7 190:11 191:21 220:3 234:11 239:12 244:24 249:23 252:11 278:4 MARKS (1) 3:10 marriage (1) 295:11 Maryann (7) 192:2 210:21 211:12 230:2,7,9,15 mass (1) 122:3 master (1) 39:9 match (5) 206:12,15 207:3,6	257:7 material (4) 19:4 22:18 24:11 90:14 materials (2) 52:10,12 matter (8) 10:12 36:11 147:19 179:5 198:14 199:25 277:11 295:13 matters (6) 37:16 74:19 82:3 237:25 268:20 273:23 maximum (1) 131:11 mayor (18) 1:8,10 110:20 111:6 114:5,21 118:18 174:17,17,19 186:17,22 211:18 214:10,25 248:16 248:23 289:14 McKinney (1) 187:12 McKinney's (14) 127:16 134:24 135:23 136:2,15,20,21 142:12,23,23 143:2 148:14 202:3 260:23 mean (32) 10:8 23:16 44:7 47:14 53:24 75:2 85:8,24 88:5 90:16 93:2 101:20 106:22 107:17 115:2 135:20 136:3 144:19 145:4 146:6 153:12 202:7 220:22 221:3,8 222:12 228:22 230:14 244:4 247:24 261:22 275:18 meaning (7) 38:14 44:4,11 83:5 147:13 203:16 266:7 means (16) 18:24 56:14 64:4 90:17,20 91:6 98:24 105:17 134:22 208:5 220:24 221:10 222:14 235:7 251:9 253:9 meant (1) 45:15	measuring (1) 84:13 mechanism (1) 207:25 med (2) 222:9 223:11 medical (7) 44:19 46:16 55:4,8 77:18,20 79:21 medication (1) 12:18 meet (3) 51:6 118:4 193:5 meeting (46) 26:2 50:4 91:7 174:10 174:12,14,16 175:2 175:7,10,19,24 176:7 177:5,7 178:3 179:25 180:8,11,12 180:14,16 181:4,7 183:12 187:17,25 188:3,10,11,12,13 188:15 248:22,24 249:3,7,11 259:4,7 259:13 260:16 271:7 272:9,11,13 meetings (4) 171:13 173:6 174:2 187:24 meets (2) 124:4 258:9 member (3) 35:8,9,21 memo (1) 122:17 Memorial (6) 2:2,15 4:14 6:10 155:2 279:9 memorialized (2) 132:22 134:13 memory (2) 108:7 151:3 memos (2) 121:13,15 mentioned (5) 27:5 55:24 211:25 237:2 266:9 merit (2) 90:22 264:20 met (5) 132:15,16 253:6 259:2 286:13 methodology (1) 26:10 Michael (1) 230:25 micromanage (1) 81:11	middle (3) 30:19 44:17 191:23 Mill (1) 3:12 mind (6) 7:18 17:17 57:8,15 112:11 201:15 Mineola (1) 4:7 Minerva (7) 192:2 210:21 211:9 211:12 230:2,7,15 minimal (1) 39:8 minimum (10) 16:17 39:13 44:10 90:9 91:8 98:22 124:4 244:13 246:25 275:22 minimums (1) 76:25 minus (1) 146:23 minutes (1) 278:9 misdeemeanor (3) 186:8 187:20 254:21 misinterpreted (1) 143:15 missed (2) 169:14 196:6 misstating (1) 170:23 mistaken (1) 237:4 mistreats (1) 155:11 misunderstood (3) 202:5 235:22 242:23 modifications (2) 34:13 145:2 modified (7) 246:7 247:23 248:5,8 248:12,18 251:20 modify (2) 151:11 152:7 moment (8) 37:2,9 65:24 98:4 108:22 181:10 186:23 190:15 moments (1) 242:16 money (5) 82:8 84:4,6 86:7 219:10 monies (1) 186:24 month (7)
M				
M (1) 6:9 mailed (1) 231:16 mailing (1) 231:15 maintain (4) 213:10,19 223:13 246:18 maintained (1) 289:25				

84:25 85:16,19,21 86:10,15,16 months (11) 14:20 22:4,8 72:2,6 86:10 133:10,11,16 178:5 241:16 month's (2) 85:2,3 morning (4) 6:16 196:15 265:20 266:9 motion (3) 135:9 160:25 277:10 move (15) 20:5,6 38:8 42:16 54:15 56:10 59:10 59:15,18 108:21 145:22,24 146:3 161:16 238:2 moving (3) 167:25 168:5,6 MPTC (2) 60:2 68:15 multiple (6) 105:25 106:13 159:13 171:9 174:5,7 multi-page (1) 147:3 municipal (15) 15:5 60:3,7 64:21,23 65:5,11 66:11 68:10 70:15 75:12 99:10 105:13 121:3 255:11 municipalities (8) 29:21,24,25 30:4 41:23 86:25 88:25 154:9 municipality (32) 82:12 91:19 92:11 93:15 94:8,9 95:6 99:20 102:5,6 109:14,16,23 110:3 110:5,9 112:22 113:18 114:13,14 116:19 118:14 128:10 129:5 150:7 150:9 160:19 185:7 185:19 216:18 248:10 276:14	298:2,4 names (7) 92:10 111:11 211:16 222:2 229:20 247:19 293:15 Nancy (2) 196:13 218:15 narrow (2) 50:17 155:19 Natalie (4) 1:10 3:20 196:7,13 nature (9) 8:12 23:23 24:9,14 164:10 166:22 198:8 204:18 291:15 necessarily (8) 56:2 63:9 134:2 136:2 150:17 216:7 218:13 266:6 necessary (17) 33:24 43:24 44:18 48:2,10,14 49:6 66:8 89:23 90:2 145:24 232:4,14,22 233:2,9,14 need (32) 8:4,9 33:25 34:2 61:14 65:11 68:17 82:2 83:14 94:17 95:22 96:4,13 129:5 129:12 133:17 137:3 147:20 149:21 150:4 151:15 170:12,25 179:21 191:12 193:7 232:15 233:20 248:10 275:7 282:3 284:2 needed (4) 34:21 54:9 178:24 287:16 needs (9) 68:15 81:7,17 91:12 91:12 138:17 198:7 198:8 215:20 neither (3) 120:17 124:12 140:2 never (6) 17:17 69:19 125:17 178:23 194:12 256:6 new (44) 1:2,18 2:2,16,20 3:6,6 3:13,23 4:7,15 6:10 29:4 61:9 63:18 65:4 66:11 69:15 93:7 116:11 119:11 124:19,20,21	134:14 135:13 137:16,20 139:9 140:10,11,14 144:13 193:3 197:23 231:3 251:8 251:14,16 254:13 275:25 279:20 295:5 296:24 newer (1) 88:15 newspaper (1) 40:17 Nice (1) 215:2 night (2) 105:14,19 Nine (1) 204:19 nitpick (1) 100:19 nitty-gritty (1) 211:19 nodding (2) 43:13 134:19 Nofi (3) 1:4 293:17,18 non-competitive (5) 91:5,7 104:17 117:5 275:12 non-county (2) 153:10,11 non-police (1) 240:5 non-probationary (2) 72:8 74:8 normal (8) 82:9 84:2,12,13 85:3 85:16,19 121:19 normally (7) 24:16 106:25 110:18 118:9 171:3 193:18 240:9 Northport (1) 30:21 Notary (2) 2:20 295:4 notation (2) 199:10,20 notations (4) 198:23 203:14,15 229:24 note (12) 19:19 90:11 97:2 98:18 100:14 118:5 132:19 141:9 142:11 146:14 147:11 150:16 noted (14) 48:6 96:18 141:17	199:8,9,11,13,15,19 200:5,6,9 201:21 294:5 notice (9) 2:16 24:25 36:21 103:6 145:7,12 150:12 222:24 296:15 noticed (5) 18:12,13,17,21 247:8 notify (1) 129:5 notifying (1) 287:14 Novikoff (258) 3:24 6:23 7:11 8:22 10:5 11:18,20,22 12:3 17:15 18:11,23 19:21 23:14,25 24:24 30:24 32:24 33:6 37:19 38:22 40:13,18 41:15,25 42:5 47:8 50:6 51:10 53:23 54:5 55:13 56:13,19 57:5 57:23 58:10 59:4 61:6,19 62:20,23 64:8,25 66:20,25 67:10,19,22 68:22 69:12 72:14 73:4 74:10,13,24 75:17 76:16 79:25 80:16 80:21 82:20 84:15 85:6 86:3,13,17 90:3,11 91:15 93:22 94:20 95:14 96:4,13 96:20 98:13 99:23 100:6,14,25 101:6 101:19,24 102:9,25 103:13 105:23 106:7,16 107:22 109:15 110:17,23 111:25 112:3,9,24 117:4,15,18,24 118:5 119:10 122:11 126:8 127:14 129:8,15,25 132:5,13,19 133:20 134:9 135:7 136:6 137:6,18,24 138:16 139:9,15 140:9,20 141:6,11,19 142:2,5 142:11,21 143:19 144:4,9 146:22 148:4,18,22 150:20 154:5,22 156:21 157:2,13 158:8,22 159:5,7 160:9,24 166:4 167:9 169:22	170:18 171:8,20 173:8,12,23 174:6 174:11 175:8 178:18 179:4,18 180:12,24 181:14 183:3,10,16 184:10 184:14,20 185:9 186:20 187:3,9,23 188:22 189:2,4,12 189:14 192:23 193:17 194:11 195:6 196:24 199:16,21 200:8,20 201:12 202:25 203:5,11 205:21 207:5 208:4,20 209:24 211:3,7 212:6,22 214:19 215:2 216:2 218:3 222:20 223:23 225:17 226:12 229:13 231:9 236:20 237:5 241:19 243:14,25 244:9,17 245:8,14 246:3 249:13 263:23 264:21 268:7,22,25 269:16 271:9,20 272:20 273:15 274:22 275:6 276:18,20 277:5,8 278:18 280:25 281:7,13,18 281:23 283:18,21 284:2,4 290:12 292:12 293:6 296:5 Novikoff's (1) 278:13 nub (1) 76:9 number (48) 12:6 37:7,11,13,17 38:3,4,5 42:25 50:11 65:16 66:9 77:8,17 78:8 79:5 79:17 82:4,18,18 83:10,14,20 104:25 106:20 113:6 125:6 128:7,11,12 145:6 150:5 156:8 157:14 160:21 191:23 204:20 219:24 224:9 226:16 227:5 227:7,25 228:7,10 228:16 245:10 252:9 numbers (6) 97:19 226:21 227:3,4 234:10 241:15
--	---	--	---	--

N

name (21)

6:7,14,16 12:5 94:7
130:9 161:20,25
162:3,19,20 177:19
196:9 211:22
229:15 237:24
247:15 255:9,22

numerous (2) 62:3 159:9 nurse (1) 233:5	201:13 202:25 203:5,11 207:5 208:4,20 209:24 211:3 212:6,21,22 215:7 217:15,16 218:3 222:20 223:3 223:23 225:17 229:13 231:9 235:10 237:5 243:25 244:9,17 246:3 249:13 268:23 269:16 271:8 276:17,18 277:4,5 281:20 283:14 293:6	1:8,11 3:19,20 21:16 23:3 30:22 31:6 50:11 62:7 80:13 94:16,24,24 95:19 97:9,9 110:13,14,15 110:25 111:3,14 114:5 143:20 166:16,25 167:17 167:21,23 168:16 169:11,21 170:17 170:24 171:17,24 172:3,8,17 173:7,14 174:3 177:21 178:2 178:13 180:7,19 181:23 184:23 186:15 187:18 188:19 191:22 192:17 193:14,22 194:2,10,20 195:2 195:23 203:24 204:8 210:17,19 212:17 214:9 215:25 218:2 220:25 227:12 230:22 233:11 234:25 235:15 238:15,18 239:4,6,9 240:6 242:12 247:19 248:16 249:3 255:11 256:5 256:7,14,15 257:7 269:11,15 270:9 279:7,22 280:6,21 281:5,25 283:7 285:12,16,19,23 286:3 287:25 288:8 288:17,19 293:10 298:2	66:10 67:16 68:7,12 68:14 69:5,6,10 70:2,3,16,20 71:22 71:25 72:4,4,7,8 73:13,15,21 75:9,12 76:17 77:2 78:17 81:15,17 82:2,6 83:13 84:23 85:17 87:12,18 94:22 99:4 99:5,21 125:12,15 125:18 143:23 147:17 149:22 154:19 227:8 228:3 229:10 232:19 233:10,13,21,25 234:24 236:7,14 244:4,7,12,16 246:15,16 252:23 253:9 255:10 256:25 282:2 283:7 283:9,10 286:8 291:12 293:4,10 296:16,17	183:17 184:20 196:10 199:25 211:10 213:16 215:14 220:9 224:20 245:14 256:12 270:14 277:25 281:16
O				
oath (7) 5:13 7:6 8:15,18 9:3 9:10,12 object (14) 88:7 94:20 96:18,20 101:13 123:6 163:2 171:20 183:3 189:15 212:24 216:2 265:2 272:20 objecting (3) 73:5 155:5 271:20 objection (179) 10:5,7 11:7 23:13,14 23:15 32:24 33:5,6 33:15 35:13 37:18 39:6 40:12,21 41:25 47:4,11 49:24 56:13 56:19,20 58:9,10,23 61:6 64:8,25 66:20 66:21 67:10,19,20 68:22,24 69:9 72:14 72:15 74:10 80:16 80:21 82:20 84:15 85:5,6,23 86:11,13 86:17 87:21 90:11 91:15 94:19 95:14 97:6 98:13 99:23 100:14,25 101:24 102:2,9,10 105:23 109:15 110:17,23 111:25 112:8,9,15 112:24 117:4,15,18 118:5 129:8,15 132:5,13,19 140:9 141:6,7 142:11 144:8 145:13 151:12 152:9,10 153:19 154:22 156:20,21 158:22 158:23 159:6,7,8 160:9,14 162:2 166:4 169:12,22 170:18 171:8,10 173:8,12 174:6,11 175:4,15 178:17,18 180:23,24 182:3 186:3,20 187:3,23 188:21,22 189:12 189:14 191:8 192:23 193:17 194:11 195:5,6 196:24 199:16,21 200:8,19,20 201:12	objectionable (3) 41:16 116:2 127:18 objections (3) 5:7 157:5 277:24 objectives (1) 51:4 objects (1) 47:9 obligations (1) 154:10 OBPD (1) 285:7 observation (3) 26:13 146:25 183:6 observed (1) 26:17 obtain (4) 15:25 16:18 35:7 233:23 obtained (2) 74:9 177:25 obtaining (1) 204:24 obvious (3) 38:18 113:10 247:9 obviously (13) 39:18 52:20 102:12 104:24 114:22 132:11 153:24 161:10 162:5,16 196:8 217:8 233:18 OC (1) 227:8 occasion (7) 9:8 164:17 168:9 173:22 174:8 194:8 263:16 occasionally (2) 18:7 211:18 occasions (2) 174:5,7 occur (1) 258:21 Ocean (113)	October (7) 13:10 205:17,21 252:10 255:14 256:4 297:19 offer (1) 196:20 offered (10) 60:12,14 118:25 124:6 125:22 129:23 131:4 132:17 149:8 194:15 office (10) 2:15 30:16,17 38:12 108:3 185:15 231:4 231:11,14 270:23 officer (93) 5:12 10:15 43:2,4 46:9 60:6,19,20 61:2,10 63:3 64:5 64:23 65:16,18 66:6	officers (42) 50:11 61:18 63:11 69:14 70:14 73:25 74:15 76:12 77:15 78:3,12,19,22,25 79:18,20 80:7,11,13 81:3 83:2 99:15 125:25 214:8 215:25 218:2 227:11 232:24 233:20 247:18 285:7,11,16,23 286:3,22 287:9,19 288:2,8,18 292:25 offices (2) 2:14 35:7 official (13) 1:9,11,13,15 118:12 120:9 190:24 195:2 206:22 219:12 255:22 256:23 258:19 oh (7) 17:15 148:18 183:10 227:22 232:12 268:7 269:12 okay (41) 7:23 12:10 13:18 18:21 23:19 36:18 37:13 42:9 52:14 54:24 55:12 56:6 74:21 77:5 79:10,15 93:6,10 105:18 116:15,23 135:25 143:7 146:4 152:22 159:25 161:17	Old (1) 4:6 older (1) 249:19 once (6) 9:9 216:13 240:20 245:12,12 259:8 ones (4) 36:14 120:9 232:14 272:17 one-page (8) 42:24 97:17 108:11 191:21 219:24 234:8 239:9 252:7 one-year (1) 20:13 ongoing (6) 26:13 141:24 170:22 193:11 194:17 253:23 on-the-job (1) 23:10 open (8) 99:2 104:16 176:19 227:9,10 229:10 233:10,24 opine (6) 54:13 106:8 132:21 157:15,24 241:20 opinion (12) 58:13,16,20,24,24 67:24 68:5 158:12 158:15 269:24 284:15 286:23 oppose (1) 152:24 opposed (3) 86:3 139:9 216:25 opts (1) 219:4 oral (1) 82:12 oranges (1) 74:12 order (8) 53:4,6 68:15 96:7,14 125:12 196:11 233:23 ordinary (1) 171:19 Orient (1) 30:20

original (3) 92:7 184:4 230:19	190:21 195:24 239:20 239:25 245:17,18 252:21 253:3,5,6 254:9,14	291:15,23 292:2 part-time/seasonal ... 65:17,19 75:2 78:25 296:17	128:4,7 149:22 160:21 167:20,22 167:23,24 182:18 186:7,13 211:11 219:11 225:22 228:12 248:6 272:23 275:3,11,14 281:22	99:22 100:8 102:16 105:25 106:3,13 114:13 116:24 117:20 128:15 130:3,10,14,18,25 131:3 154:14 161:21 190:23 191:16 193:3 203:17 212:13 215:4,12,19 224:7,9 224:20,24 225:19 226:19,21 235:18 235:19 236:9,18 243:10 253:14 255:10 258:8
ostensibly (1) 242:14	parameters (1) 166:9	pass (8) 77:9 78:9 130:4 223:5 234:4 241:11,25 287:9	percent (6) 84:2,7,9,13 85:3 86:22	
outcome (3) 170:16,20 295:12	Park (1) 231:3	passed (5) 222:23 223:2,13,16 286:10	perfectly (1) 50:18	
outside (5) 35:6 61:3 63:4 216:18 242:19	parse (1) 162:6	passing (2) 128:20 242:5	perform (2) 165:22 248:7	
overlooking (1) 79:3	part (21) 41:10 45:20 48:8,22 60:13 62:4 79:6 81:15 82:24 85:16 103:12 174:3 186:13 208:8 232:24 233:17 235:25 241:10 255:4 292:5,15	patience (1) 278:15	performance (8) 165:17 209:20,23 210:5,12 268:16 270:5 284:24	persona (1) 129:21
overly (1) 151:8	participant (1) 248:22	patient (1) 145:5	period (36) 9:22 10:15 14:7 16:5 20:14,15 21:4,23 23:16 24:8 26:5 27:2,12 28:3,22 31:19 34:14 68:9 69:25 71:6,24 72:6 73:14 75:11 124:19 127:7 131:25 167:6 167:18 168:11 170:14 172:25 194:24 198:7 244:13 247:10	personal (13) 19:7 58:21,24,24 67:23 68:2 158:19 181:15 186:12,24 187:20 210:23 211:4
oversee (4) 22:13 32:3,7,10	participate (2) 44:14 174:9	Paul (3) 222:9 229:15 247:13		personally (2) 177:24 187:2
O'BRIEN (1) 3:10	participated (2) 173:6 174:2	pay (4) 70:8,9 186:9 228:8		personnel (135) 11:3 13:20,25 14:4,6 14:8,11,12,13,14,15 14:19,22 16:8,12,20 17:8,11,12,25 18:8 20:11,12,16,22,23 21:5,8,11,12,13,18 21:20,23 22:6,6,12 22:17,19,22 23:8,9 23:12,23 24:3,10,18 24:19 25:24,25 26:19 27:7,8,14,21 27:23,25 28:6,7,10 28:12,17,25 29:14 29:15,17 30:3 31:14 31:15,17,19 32:4,5 33:20 82:13,15 117:7 129:9,14,16 143:13 144:15 145:9,10 162:23 164:3,4,13,13,20,23 165:17,17,20,21 167:8 177:23 190:10 191:2 192:7 197:7,12,19 199:25 200:3 201:7 202:16 202:22,24 203:3,9 204:11 206:2 207:23 208:2,11,15 209:3,6,15,19,22 210:18 212:2 238:4 238:7,8,11,16,24 247:2,6 253:4 260:3 297:10
O'NEILL (1) 3:10	particular (28) 16:21 19:7 44:3,11 51:14 60:13 99:9,14 115:6 118:14 128:10 129:11 136:23 142:15 149:7 154:14 194:7 202:10 208:23 220:22 221:21 232:15 238:20 239:16 243:6 266:12 274:3 277:20	payments (1) 206:18	periods (1) 74:19	
o0o (1) 5:17	particularized (1) 161:5	pay (4) 70:8,9 186:9 228:8	permanently (1) 266:10	
P	particularized (1) 161:5	paychecks (1) 206:23	permanent (15) 28:10 76:11,22 77:3 99:3 117:11 154:19 154:20 208:14 212:15,16 213:9 221:3,5,6	
pace (1) 146:7	participated (2) 173:6 174:2	payroll (27) 81:9,14 82:22 206:4,7 206:12,13,16,17,19 206:22 207:2,8,11 207:12,19,24 246:21 247:4 253:11,18,20,21,22 254:5 269:20 288:3	permeates (1) 53:21	
Pagan (1) 230:25	particularized (1) 161:5	payrolls (2) 172:15 190:24	permissible (8) 84:22 86:19 87:17 88:4 113:24 159:23 184:5 235:23	
page (22) 37:6 59:23 63:22 79:10,13 90:15 145:7 156:8 190:18 220:12 221:21 235:2 293:19 296:3 296:14 297:3 298:11,13,15,17,19 298:21	particularized (1) 161:5	PD (8) 21:2 30:14 42:22 71:10,12 72:24 75:14 76:21	permit (9) 19:22 157:11 159:19 233:6,9,19 234:2 277:15,18	
pages (2) 36:9 104:9	particularly (2) 160:17 247:6	PDs (3) 41:3 42:18 81:21	person (56) 17:9 21:10,22 26:15 26:21 38:20 44:13 84:3 91:11 93:15,17 93:21 94:7,9,10	
paid (3) 70:6 186:24 207:3	parties (5) 5:4 53:12 182:25 249:8 295:11	peace (1) 61:10		
pain (2) 96:24 97:5	parts (2) 110:4 284:9	Pelk (2) 237:24 238:6		
paired (2) 26:23 27:5	party (5) 10:16 11:9 96:6 191:6 273:13	Pelk's (1) 238:22		
palpably (5) 18:18 59:4 61:22 62:11 183:4	part-time (33) 64:23 65:7 66:5 67:14 68:14 77:18,23 78:2 79:17,17 80:11,12 81:17 82:2,6,17 83:7,9,13,23 84:23 154:18,23,24 155:4 234:25 235:17 236:7 237:11 279:4	pending (21) 8:6 62:19,23 222:4,9 222:12,17,19 223:11,15,22 224:7 224:10,15 225:4,15 225:24 226:3 240:2 240:17 258:14		
panoply (1) 213:6		people (33) 26:22 31:22 61:9 73:25 75:22 76:11 83:8 99:2 101:4 113:4 127:22,23		
paperwork (2) 121:18 167:4				
Paradiso (9) 211:23 212:5 213:18 214:2,13 256:4,6,11 257:5				
Paradiso's (1) 212:9				
paragraph (12)				

persons (2) 173:18 225:3	291:13 293:14	78:3,12,17,19,22,25	162:22 166:12	pound (2) 83:18 227:2	
perspective (1) 195:13	plan (2) 70:12 88:14	79:20 80:7,11,12	176:12 198:21	power (4) 114:19 118:12,18,19	
pertain (2) 38:10 191:20	plays (1) 224:14	81:3,5,6,9,11,15	204:24 207:9 208:3	powers (1) 215:6	
pertaining (6) 140:12 143:21 153:9 264:22,25 272:25	Plaza (1) 3:22	82:2 83:2,6 85:17	209:7 212:14,17,20	practice (2) 67:7 198:14	
pertains (4) 122:9,12 157:4 284:24	please (26) 6:7 7:18 8:2 23:22 28:21 37:5 43:7 65:14 66:3 103:19 104:12 109:3 111:16 138:14 141:19 145:24 170:23 190:5 206:10 219:23 239:22 245:17 249:20 251:12 254:17 290:16	87:12,18 94:21	213:4,8,12 218:20	preceded (1) 142:14	
Phillip (11) 165:2,6 193:25 194:4 194:6,8 253:3 255:13 256:8 263:9 269:12	pleased (4) 269:17,21 270:4 287:23	97:19,22 98:9,11	218:24,25 224:21	preceding (2) 142:13,25	
phone (2) 173:6,25	pleasure (1) 270:6	99:4,5,15,21 102:5	224:22,25 225:14	precipitated (1) 138:5	
phrase (3) 75:6 208:4 216:5	pocket (1) 143:2	108:4 125:12,15,18	225:19,22,23 226:2	precisely (2) 22:25 267:18	
phrased (1) 191:10	point (34) 7:25 15:16 19:22 25:20 28:13 34:17 48:7 50:10,13 52:24 57:10 59:18 95:22 106:14 135:17,22 137:2 142:9 144:8 146:2,7 155:9 156:6 156:23 173:5 176:4 176:23 183:9 188:6 194:19 246:22 266:5 291:16,19	125:25 126:7,15,16	227:2,13 228:3,5	precluded (1) 225:20	
phrasing (2) 76:6 217:14	police (192) 1:11,12,13 3:21 9:19 9:21 10:15 17:2,5,7 23:5,7 40:8,24 41:14,19,24 42:7,13 43:2,3 46:9 47:25 47:25 48:17,19 49:2 57:13,15,18 60:4,6 60:9,10,12,15,19,20 61:2,14,15,18 63:3 63:7,11,12,17,20 64:2,5,21,23 65:3 65:11,16,18 66:5,10 66:12 67:16 68:7,11 68:12,13,14 69:5,6 69:10,16 70:2,3,14 70:15 71:22,25 72:3 72:4,7,8,11,17,19 73:9,13,15,21,25 74:17 75:9,12 76:12 76:17,19,24 77:14	126:25 127:12	229:5,23 230:24	preestablished (1) 237:17	
physical (23) 44:20 46:6,21 54:20 55:4,6,8,9,15 77:22 77:24 78:20,20 79:6 79:8 231:17 234:23 235:4,22,25 236:9 236:11,13	poor (1) 59:2	128:5,11 143:23	233:10,24 234:6	preface (2) 167:10,13	
pick (1) 59:19	portion (5) 45:5 62:24 107:11 281:2 292:14	147:17 149:22	235:15,17 236:2,7	preparation (3) 167:3 261:4,7	
picking (1) 283:5	pose (1) 50:16	154:18 176:12,21	236:12,14 237:11	prepare (5) 200:22,24 258:25 259:15 260:17	
pistol (4) 233:6,9,19 234:2	posed (3) 50:21 82:11 87:14	177:11 213:20,23	238:23 240:2,16	prepared (4) 179:10 200:12,17 246:14	
place (16) 9:14 25:13,21 48:25 50:18 53:6 95:15 106:20 113:8 168:12 175:11 199:23 208:8 218:7 270:22 283:3	position (112) 10:25 13:3,9,11,17 14:3,10 16:12,18 17:9 20:10,11,22 21:9 22:20 25:24 27:4,15,18 31:5 33:22 41:14,22,24 42:12 46:25 78:18 81:15 87:18 89:7 91:20 93:16 100:21 100:22 104:15 112:25 113:19 116:24 117:2,12 124:16 126:14,25 128:17 129:21,22 130:7 131:7 133:5 161:15,20 162:10	234:24 236:6,14	242:4 243:9,11,13	prepares (1) 32:11	
places (4) 105:25 106:23 135:13 279:21	poor (1) 59:2	240:5,8 244:4,7,12	243:23,24 244:11	present (21) 4:8,21 24:9 25:10 26:6 27:2,12 28:4 28:13,19 31:14,20 32:5 80:19 90:7 128:25 142:10 174:16,19,22 204:21	
plain (1) 67:2	poor (1) 59:2	244:16 246:16	244:15,16 246:19	presenting (1) 81:13	
plaintiff (2) 10:19 144:17	poor (1) 59:2	247:18 252:23	248:12 250:24	presently (1) 12:17	
plaintiffs (22) 1:5 3:4 6:18 62:8 96:3 111:19 143:22 265:11 278:23,24 282:9,13 284:5,8,17 284:25 285:3 288:12,22 289:7	poor (1) 59:2	253:8 255:10,11	259:11 276:7 289:2	presumes (3) 151:13 152:12 182:4	
	poor (1) 59:2	256:5,7,25 282:2	positions (38) 15:3,5 29:23 30:2,10 31:4 39:16 41:4 87:13 88:19 89:8 92:6 94:16,24 95:11 97:9 98:11 104:19 114:18 115:6 116:22 124:24 149:21 158:18 204:17 209:8 210:4 210:8 225:8,10 227:10 229:10 231:24 240:4,9 256:14 258:15 293:4	244:15,16 246:19	presuming (1) 196:11
	poor (1) 59:2	283:7,8,9 286:8	possession (2) 51:15 271:13	pretty (3) 235:11 268:22 277:12	
	poor (1) 59:2	291:12 293:9	possibilities (4) 176:16,17 178:14 242:19	previous (3) 20:22 142:7 278:5	
	poor (1) 59:2	296:16,17,19	possibility (3) 126:12,13 240:13	previously (2) 38:11 171:22	
	poor (1) 59:2	polygraph (15) 44:20 46:23 47:2,16 47:17,23 55:4 56:12 56:18,23 58:8 78:9 78:10 222:10 223:12	possible (12) 26:22 35:7 72:3 88:17 108:8 113:14 130:21 143:6 198:11 242:19 249:11,14	pre-canvassed (5) 221:8,20 250:12,16 250:21	
	poor (1) 59:2	poor (1) 59:2	possibly (1) 163:11	principal (30)	
	poor (1) 59:2	poor (1) 59:2	post (6) 11:25 15:21 197:22 231:4,11,14		
	poor (1) 59:2	poor (1) 59:2	potentially (4) 187:2,21 188:20 277:2		

11:3 13:19,24 14:4 24:18,22 26:14,24 27:7,8,14,23 31:10 31:15,18 32:4 145:10 162:23 164:13,20,23 177:23 203:3 209:3 238:7,8,11,16,24 253:4 print (2) 205:6,14 printed (1) 203:15 printout (5) 137:16 147:4,7 206:17 297:4 prior (33) 8:20 13:12,19 14:4,10 14:13,21,25 43:18 103:16 114:4,6 142:25 147:12 168:24 171:16 172:9 194:3 198:2 205:7,23 220:11 249:7 251:15 262:14 264:14 268:19 269:9 270:24 271:11 273:15 282:23 288:25 privacy (1) 162:8 privilege (3) 8:12 160:20 162:9 privileged (1) 158:7 probably (8) 55:18 79:12 116:5 135:12 142:17 213:14 217:16 262:24 probation (3) 9:20 164:5 166:11 probationary (10) 9:22 10:15 20:14 68:9 71:24 73:14 74:6,18 75:9,10 problem (9) 171:2,5,7 173:14 182:2 187:9 188:12 193:9 212:25 problems (7) 102:13,13 168:2,5 169:19 194:18 287:8 Procedure (1) 7:14 procedures (6) 120:8 121:24 122:2	145:17 152:19 178:20 proceed (3) 37:24 138:11 184:6 PROCEEDINGS (3) 295:1 296:1 297:1 process (8) 90:23 170:22 193:11 207:23 208:8 236:3 255:4 258:18 processed (1) 226:20 produce (8) 51:16,17 52:7,16,20 111:16 120:15 123:15 produced (21) 42:25 43:20 51:24 52:3,6 65:15 97:18 103:5 111:15 141:15 189:23 191:22 234:9 239:9 245:8,12 252:8 259:20 260:3 273:13,19 produces (6) 93:14 120:3,6,18 125:3 253:14 producing (1) 53:18 production (1) 123:4 professional (3) 2:18 54:18 205:4 professionals (3) 54:19,23 56:4 proffer (1) 95:23 program (14) 16:10 64:24 65:3 66:16 67:17,18 69:7 69:18 70:5,16 71:8 71:18 75:12 143:11 progress (1) 146:17 progressing (1) 169:7 prohibit (1) 88:21 prohibits (1) 73:8 promoted (1) 22:9 promotion (1) 259:10 promotional (13) 28:9 98:23,24 99:8 128:6,9,14 242:13 243:4,9,12 244:6,15	prompt (1) 20:6 promulgated (1) 32:15 pronunciation (1) 6:13 proof (1) 253:14 proper (7) 58:3 100:15 145:12 153:23,25 182:24 216:13 properly (1) 186:9 property (2) 80:9 117:9 proposed (1) 178:15 prospect (1) 104:15 protection (7) 80:8 154:13,21 213:3 265:7 275:5,10 protections (5) 74:5 212:19 276:15 276:25 277:3 protective (1) 96:7 protocols (1) 246:23 provide (10) 40:3 137:8 143:12 150:17 154:8,12 193:5,6 194:9 231:10 provided (9) 24:9 25:9 38:12 49:21 81:18 145:8 172:21 190:19 217:19 provides (2) 49:14 202:12 provision (7) 135:4 136:23 143:16 158:21 159:4 254:24 265:14 provisional (42) 123:20 124:4 125:11 125:14,17,19,21,25 126:6,24 127:4,8 129:4,13,20 130:5 130:13,15,22 131:2 131:12,18,23 135:11,15 147:5,8 147:17,25 240:2,12 240:15,16 241:8 242:8,18,25 257:21 258:3,19 259:10 297:6 provisionally (2)	257:24 258:13 provisions (2) 126:2 261:2 psych (2) 222:9 223:11 psychological (13) 44:20 46:19 49:10,15 49:17 50:24 51:8 52:4 54:22 55:2 77:10,12,13 psychologicals (1) 52:6 psychologists (3) 50:23 51:8 54:21 public (15) 2:20 22:13 35:2,8,9 35:15,21 42:14,17 78:17 88:18 120:10 151:5 276:14 295:4 publication (1) 134:25 published (5) 34:24 45:18,20 119:9 119:13 purpose (8) 56:17 57:3,7 58:7 111:23 112:2,5 272:11 purposes (9) 19:21 60:25 63:2 84:13 110:19 119:2 135:18 141:13 231:7 pursuant (11) 2:16 53:3,17 55:23 129:6 130:5 192:5 196:23 208:18 229:11 236:16 pursue (6) 15:13,19 102:21 171:7 186:10,11 pursuing (1) 70:2 put (9) 103:6 114:3 156:11 159:23 199:22 249:16 251:17 279:16,21 puts (1) 46:5 putting (3) 18:19 19:2,13 P.C (1) 3:10 p.m (1) 294:5 <hr/> Q <hr/> qualification (5)	39:17 49:6 57:3,7 74:17 qualifications (18) 16:17 39:9,13,15 40:5 44:10 50:5 57:2,6 61:2 63:2,10 75:3 90:10 91:8 98:22 124:5 258:9 qualified (3) 37:15,21 93:15 qualifying (12) 31:17 44:19 46:16,18 55:3 77:9,18,20,22 77:24 234:4 286:9 Queens (1) 15:11 question (177) 5:8 7:19 8:2,6,8 9:19 11:23 24:6,24 25:3 38:13,21 39:19,20 41:5,8 45:4,11 47:10,21 50:21 55:13 56:9,14,22 57:24 59:8,14,17 62:18,22 63:7,14,25 64:11,13,15 68:4 70:25 73:3,5,11,12 73:19,23 76:14 77:6 82:11,12 85:7 86:12 87:13 89:16 90:5 92:19,24 93:5,7,8 93:18,23,24 94:2 95:10 96:5,9 99:20 99:25 100:16 101:25 102:15 104:3,25 105:6 106:12,17 107:4 113:23 115:7,10,17 117:16,17 123:9 133:23 134:17 135:4 138:4,9,16,18 139:15 140:20 143:8 144:23 145:21 147:23 148:5 151:13,21,23 152:12,15,23 153:3 153:23,24 154:2 155:7 157:21 159:9 159:18,22 161:2,6 167:10,11 169:15 171:21,22,22 172:4 179:22 181:15 182:4 183:6 184:5 184:15,18 185:10 187:8 189:17 191:10,12 195:19 201:14 202:4,23 203:7 213:2 215:8 216:3,11,13 217:15
--	---	---	---	---

218:4 223:2,4 225:18 239:18 242:2 247:22 258:12 261:23 265:3 266:3 268:23 269:2 271:10,16,24 272:4,5,7 273:2,7 275:7 277:15,19,21 281:8,10,13,19 288:21 289:6 292:13 questioned (1) 172:22 questioning (5) 18:18 19:14 147:13 263:25 278:13 questions (53) 7:16 8:20 28:24,25 29:2,3,11 32:19 37:20 38:24 40:19 47:15 50:16 51:19 53:22 58:5 61:22 76:5 79:11 89:12 103:15 108:6 116:6 126:2 127:15,18 132:20 134:12,20 135:2 136:7,11 138:11 142:4 145:14 151:25 156:5 162:6 163:3 182:23 184:19 190:20 246:22 247:11 249:19 277:22 278:5,15,21 282:8 285:9 289:10 291:10 quick (1) 283:21 quite (5) 40:2 135:17 153:2 158:11 183:16 quiz (1) 151:3 quotation (1) 266:20 quote/unquote (1) 286:22 <hr/> R <hr/> R (1) 295:2 RADLER (1) 3:18 range (2) 87:6 248:7 ranked (1) 224:9 ranking (3) 91:9,10 133:17	rate (2) 70:8,9 rationale (1) 51:14 reachability (1) 91:24 reachable (2) 124:6 225:12 reached (3) 264:19 274:25,25 read (39) 37:10,11,13 38:5,6,25 39:4 45:4,6 55:17 57:15 59:24,25 60:2 62:25 79:13,23 107:9,12 123:2 138:21 150:13 151:7 156:13 220:10 239:21,23 252:15 254:11 259:17 260:22,23 261:2 262:25 280:23 281:3 285:4 292:12,15 readily (2) 134:23 135:23 reading (3) 40:16 229:18 284:9 ready (2) 4:3 278:14 real (1) 117:9 reality (1) 76:20 realize (1) 139:19 really (13) 6:23 64:10 76:6,7 96:24,25 103:10 120:13 125:5 126:2 143:7 246:20 253:19 Realtime (1) 2:18 reappointed (1) 240:20 reason (18) 64:13 67:24 161:4 175:16,24 199:14 199:18 200:2,17 237:16 243:21 298:6,11,13,15,17 298:19,21 reasonability (1) 157:18 reasonable (3) 149:20 150:5 198:10 reasonableness (1) 156:18	reasonably (2) 156:15,16 reasons (1) 38:19 recall (33) 11:5 16:25 22:3 30:4 34:11 66:14 160:4,7 160:12 165:5,11,14 166:13,19 167:18 168:4,19 176:3,13 176:17 178:6 180:4 189:19 248:24 264:3 265:13 266:16 267:4 282:10 284:9 288:13,15 289:11 receive (7) 192:18 200:25 209:19 209:22 280:20 281:5 288:24 received (2) 230:12 281:17 receiving (3) 288:25 292:6,16 recess (1) 190:15 recite (4) 39:15,25 40:3 293:16 recognize (8) 104:3 108:23 148:9 229:20 234:18,20 234:21 255:8 recognized (6) 60:7 61:3 63:3 64:5 65:4 66:11 recollection (6) 133:15,21 150:18,21 262:15 265:12 record (39) 6:8,13 18:19 19:14,20 37:10 47:8 54:4 61:20,21 62:17 64:16,18 89:18,20 96:11,18 131:15,17 137:24 141:14,14 146:15 147:12,21 190:3 223:13 228:10 229:9 260:2 260:11,13 265:21 265:23,24 278:11 283:15 295:8 298:7 recorded (1) 7:17 records (7) 223:18 229:8 253:22 259:23,24 264:6,11 recruits (1) 69:18 recurring (1)	242:2 reduced (1) 70:9 reevaluate (1) 161:8 refer (12) 29:19 101:10 102:6 106:20 109:8 113:12 166:7 199:8 199:11 227:4,18 254:25 reference (3) 138:7 160:3 265:9 referenced (3) 211:17 252:20 253:16 referred (12) 21:3 45:5 62:24 91:22 106:19 119:9 121:24 160:8 161:22 206:4 255:20 282:8 referring (28) 9:21 17:6 25:7 29:20 60:8 83:10,18 89:6 94:21 114:24 115:11 124:9 139:22,23 156:9 160:5 183:11 222:6 227:16 232:7 248:24 254:15 259:25 270:19 276:4 281:14 282:20 289:15 refers (5) 82:24 83:16 202:3 205:18 211:6 reflect (2) 137:24 172:21 reflected (1) 228:17 refresh (2) 133:15 150:18 refreshed (1) 150:22 refreshing (1) 133:21 regard (14) 106:9 172:3 187:11 197:14 250:23 279:6 280:7 284:23 285:11 286:21 287:25 288:11,21 289:6 regarding (13) 10:14 61:24 62:20 154:9 160:4 163:3 165:13 166:24 168:16 169:11 269:10 272:24	274:8 Registered (2) 2:17 233:5 regs (2) 116:9 134:15 regular (3) 7:12 124:24 126:17 regularly (1) 169:3 regulation (10) 29:8 32:22 84:23 100:9,13 101:23 102:5 115:25 198:6 246:5 regulations (17) 22:16 32:14,15 101:17 139:13 144:2 195:12 215:23 225:2 235:24 245:19,22 260:21 268:13 279:8 286:24 289:19 rehire (1) 95:25 rehired (6) 280:8,19 281:4 282:15,23 283:12 reinstated (1) 176:22 reissued (1) 224:3 relate (5) 57:17 173:18 215:10 216:12 221:14 related (7) 29:12 53:9 89:10 145:3 166:15 269:3 295:10 relates (2) 160:18 161:6 relating (1) 52:5 relation (3) 17:19 23:20 266:10 relationship (8) 164:11 267:8,12,23 267:25 268:4 270:17 272:6 relative (3) 23:17 87:11 154:15 relatively (1) 237:25 relevance (3) 50:2 147:20 268:9 relevancy (8) 11:18 74:13 95:20 96:5,8 97:3 122:11 183:17
---	---	--	---	--

relevant (3) 19:4 40:20 126:3	62:25 65:14 96:15 96:17 97:17 103:19 107:12 108:10 137:14 190:15 219:23 234:8 254:10 281:3 292:15	91:21 92:22 95:13 128:17 232:5 233:9 233:25 246:8,12 253:7	88:5 90:2 91:10 95:11 102:14 109:20 116:18 126:2 144:22 145:14 152:20 162:18 172:8 177:7 180:8 186:3 192:15 193:22 198:6 203:25 210:19 213:7,11,25 214:8 217:6 218:2 236:5 240:4 241:6 248:18 264:19 266:13 267:2 268:20 269:15 270:8 277:22 281:11 287:14 292:9,20	222:15 270:5
remain (4) 130:6 131:18 226:4 240:16		requirements (35) 28:5 31:12 43:25 44:18 45:18 47:17 53:17 57:12 63:13 63:21,22 64:2 66:8 66:24 70:21,23 74:2 76:24 89:24 92:16 92:25 93:13 95:4,5 120:24 192:11 204:23 232:15,22 233:3 244:13 286:13 287:11 293:3,11		retain (1) 212:19
remainder (1) 251:5				retake (1) 228:13
remedy (2) 170:2 173:11	reporting (3) 169:11,19 191:20			Retaliatory (1) 151:4
remember (21) 9:16 10:2,3,19,22 11:19 14:16 18:10 22:5,25 25:15 166:23 171:18 194:5 255:13 262:21 264:12 272:10,21,22 273:3	reports (2) 121:15,16			return (2) 96:12 230:3
	Repp (1) 196:13			review (11) 169:2 230:4 250:9 259:22 260:20 261:6 262:19,22 284:12,21 288:6
	represent (2) 137:15 147:4			reviewed (6) 34:19 250:10 262:11 271:14 273:9,12
	representative (4) 173:7 174:3 181:23 257:12	requires (3) 63:18 134:13,21	respectfully (2) 51:17 73:19	reviewing (2) 246:24 260:15
remind (5) 170:12,25 186:7,11 287:15	representatives (5) 33:18 180:19 187:18 248:23 249:3	requiring (1) 215:19	respective (1) 5:3	reviews (6) 33:20 207:12 209:20 209:23 210:6,12
reminding (1) 171:15	represented (3) 11:6,11,13	requisite (1) 287:10	respects (1) 24:11	revised (1) 43:14
remotest (1) 147:18	representing (2) 6:17 11:14	research (5) 134:23 137:19 141:22 157:20 277:9	respond (2) 159:19 179:10	revision (3) 43:12,18 205:12
remove (1) 223:14	request (28) 36:7 40:23 48:4,18,20 51:11,21 53:23 56:23 57:19 90:24 92:12 94:25 97:10 97:12 108:12,15 109:4,4 111:23 112:14,18,20 123:4 176:2 185:3 233:14 296:21	reserved (1) 5:8	respondents (1) 150:5	revisions (2) 34:20 143:10
removed (2) 131:6 236:25		residence (9) 95:21 105:20 106:19 107:5,6,13,18 108:7 113:9	response (6) 8:11 48:17 271:24 272:8 282:7,20	reword (1) 276:19
repaid (1) 213:9		residences (1) 106:14	responsibilities (6) 17:25 19:9 20:21 29:17 212:4 258:16	RexCorp (1) 3:22
repeat (1) 8:3	requested (8) 107:11 113:20 175:6 175:12,14,19 281:2 292:14	residencies (1) 106:9	responsibility (16) 16:23 18:6 21:4,14 22:24 31:2,22 152:21 203:24 207:10,16 208:25 209:13 229:23 237:21 286:12	re-employment (2) 275:21 280:11
rephrase (8) 8:3 92:18 93:17,24 153:3 159:22 191:11 212:15		residency (12) 92:16,21,25 93:13 95:3,9,12,24 97:10 97:13 108:21 231:7	responsible (13) 33:14 48:13 49:11 169:5 193:13 198:22 285:6,10,15 285:18,22,25 286:6	re-provisionally (1) 130:18
replaced (1) 251:16	requesting (2) 109:10 176:6	resident (4) 95:17 105:5,8,10	restricted (1) 85:21	right (26) 18:23 56:24 57:24 74:20 95:7 96:25 101:8 111:6 115:21 121:4 122:10 126:22 134:9 137:10 148:5 157:2 157:23 192:9 200:11 214:21 220:18 221:19 249:16 269:3 270:2 283:6
replaces (1) 233:22	requests (1) 191:2	residents (4) 105:3 113:7 220:24 230:22	restrictions (6) 52:9 53:10 82:6 89:10 89:13,15	rights (8) 160:21 212:19 213:2 213:24 264:8 265:5 274:11,11
report (21) 27:15,22,24 81:10 82:3,13,15 163:18 190:10 197:7,12 204:10,15 213:21 215:11 248:10 260:3 279:18,19 286:7 297:10	required (11) 28:16 66:16 93:19 94:9 129:22,25 132:3 151:24 153:16 246:17 280:6	resignations (1) 197:15	result (2) 214:2 278:23	right-hand (1) 191:24
reported (20) 1:23 17:10,13 21:10 21:20,22 81:8 102:16 129:10,12 197:19,23 198:8 203:21 206:13 212:10,11 286:4 291:16 292:2	requirement (38) 47:6 48:3,11,15 56:21 61:5,8,9 63:5 64:3,7 64:21 65:6 71:8,10 71:10,13,16 72:5,9 73:16,18,22 74:22 78:11,15,24 82:16	resolve (1) 168:2	resulted (1) 169:23	ripened (1) 25:25
reporter (23) 2:18,19,19 6:6 7:18 36:19 42:24 45:6		resolving (1) 169:7	resulting (1) 99:13	RIVKIN (1) 3:18
		resources (2) 255:18,20	results (2)	Road (2)
		respect (57) 22:18 39:12 41:13 49:23 52:4 54:25 55:2 63:6 71:16 72:12 77:13 78:16 82:3 83:4 87:11		

3:12 4:6 rob (2) 155:14,15 Rogers (3) 3:20 196:7,13 role (3) 212:4 287:6,13 roster (10) 203:18 206:14 207:7 213:22 259:23,24 260:5 265:6 283:15 283:17 rosters (1) 283:2 rotating (1) 106:2 rotation (1) 126:17 Roughly (1) 44:17 round (1) 138:5 routine (1) 246:23 routinely (1) 254:7 RPR (3) 1:23 295:4,18 rule (29) 32:21 71:5 72:17 83:17,18,19,19,20 83:22 84:5 95:19 99:19 115:8,16,25 116:8 133:16,22,24 134:2,5,6,8 198:6 224:5,13 237:23 240:18 246:4 rules (69) 7:14 10:14 18:24 22:15 29:10 32:17 32:20 33:4,8,14,25 34:11,20,23 35:22 36:8,13 72:11,12,16 72:23 73:2 83:17,19 105:10 115:19 116:9,11,17 117:3 117:14 119:13,22 120:21 129:6 130:6 130:17,24 132:2 136:18 139:13 140:17,23,25 141:3 141:4,4 144:2 151:10 152:19 193:6 201:23,25 202:3,8,19 215:23 216:12,25 217:18 217:22,24 229:12 243:12 245:18,22 246:10 261:7	286:24 ruling (1) 158:10 run (1) 50:24 <hr/> S <hr/> safety (4) 42:14,17 78:17 88:19 sake (1) 254:10 salaries (2) 87:15 89:4 salary (19) 70:4,12 84:8,10 86:22 86:24 87:12 88:14 89:15 186:13 197:16,20,21,22,22 197:23 198:2 213:9 258:20 Sanchez (47) 1:14 163:24 164:25 165:6,13 166:10,15 166:24 167:7,16 168:20 169:9,18 170:8,15,20 172:23 263:21 264:15 267:17,21 268:20 269:10 270:15,25 271:12,17,23 272:9 272:14 273:6 284:6 284:16,22 285:5,10 285:18,25 286:17 286:20 287:3,24 289:3 292:11,22,25 293:9 Sanchez's (6) 165:16 168:25 260:6 260:10 267:11 286:12 sanctions (3) 19:16 135:9 160:25 satisfactorily (1) 75:10 satisfactory (1) 165:18 satisfied (9) 28:6 31:13 72:9 73:16 99:22 100:5 128:16 244:16 293:3 satisfies (1) 70:20 satisfy (7) 23:11 61:4 63:5 64:6 65:6 71:8 72:4 saving (1) 219:10 Savings (1) 15:2	saw (3) 3:12 155:14 263:5 saying (4) 59:16 89:3 145:25 217:13 says (24) 34:5 73:17,20 79:25 80:2 90:15 105:3 106:5 109:6 141:11 142:24 157:4 200:12,14 205:7 220:20 221:7 226:12 230:20,25 232:4 251:6 255:6 255:17 schedule (5) 85:20,24 125:4 234:23 242:2 scheduled (5) 126:15 130:19 131:4 131:13 261:19 Schneider (27) 27:25 34:6 48:16 163:20,22 174:20 176:2 180:17 261:13,20 263:9 264:5,14,18 266:17 266:24 267:16,19 267:25 268:18 269:8 270:10,20 272:13 273:6 274:13 275:2 Schneider's (1) 207:13 school (9) 15:7,9,10,13 18:9 30:18 74:17 106:21 234:5 scope (2) 31:21 152:5 score (5) 128:20 149:19 150:4 227:15 228:17 scores (2) 91:13 92:9 SCPD (1) 69:14 sealing (1) 5:4 searchable (1) 11:24 season (20) 279:23 280:8,10,15 280:20 281:4,11,12 281:15,25 282:17 282:23,24 283:8,10 283:12,13 291:13 291:23,25 seasonal (18)	66:5 67:15 77:19,23 154:18,23,24,25 278:24 279:6,17,24 280:16 282:2 283:7 283:9 291:12,21 seat (1) 96:12 second (23) 25:18,19 37:6 79:10 79:24 92:6 93:17,21 93:22 94:9,10 130:13,15 135:18 151:21 156:8 195:22 230:24 232:4 241:6 254:9 254:11 279:14 second-to-last (1) 239:24 section (49) 44:17 83:5 119:7 137:17,21 138:3,21 139:11 142:8,13,15 142:24,25 144:22 147:4,8,14,24 148:14,21 150:19 151:4,6,11,13 152:14,18 153:7,17 154:11 156:6,9,13 156:15 161:22 189:21 254:21,23 265:10 266:13 275:9 276:12,15,16 276:25 277:3 290:10 296:25 297:5 sections (3) 32:7 186:7 217:6 see (28) 33:24 61:24 89:15 116:5 123:15 138:12 143:4 155:15 156:9 205:15 206:21 219:7 220:16 222:5 227:16 228:25 230:4 231:17 232:3 247:11 250:25 264:6 265:6 274:11 274:15 283:2,18 288:6 seeing (1) 288:13 seek (1) 96:6 seeking (2) 19:15 262:8 seen (17) 37:3 43:9 65:25 98:5 122:24 126:11	197:2 211:13 220:9 220:12 239:15 245:5 247:18 252:17 257:11 273:19 293:15 selected (1) 291:24 self-explanatory (1) 235:11 send (9) 113:3 149:23 171:12 193:8 253:24 279:18,23 280:7 281:21 sends (2) 150:6 172:14 senior (29) 14:6,8,11 17:11,12 21:11,18 22:9,22 24:19,21 26:14,21 26:24 27:21 28:7,16 29:13,15 30:3 31:9 31:11,14,17 32:5 164:13 202:24 208:3 209:6 seniority (1) 213:10 seniors (2) 26:25 31:24 sense (6) 73:20 87:13 100:23 208:21 245:25 282:17 sent (7) 149:12,17 177:10,13 178:8 179:6 189:18 sentence (9) 59:23,25 239:19,24 246:6 252:20 253:2 253:5 254:11 sentences (1) 239:19 separate (10) 30:9 45:21 71:12 119:14,17 218:23 219:9 263:14 279:18,19 separately (1) 183:24 sequentially (1) 226:21 sergeant (37) 97:19,21 98:9,11 99:21 100:4,17,20 101:11 102:7,17,17 126:7,15,16,25 127:12 128:5 176:22,23 178:13 178:20,23,24
--	--	--	--	---

179:14 181:24 185:2 213:20,23 228:6 240:15 241:12 244:6,15 256:11 257:4 296:18 sergeants (2) 240:12 242:10 sergeant's (6) 100:18 128:21 176:20 242:3 244:19 259:11 series (1) 270:13 servants (1) 50:23 serve (1) 20:18 serves (1) 68:9 service (416) 1:14 10:14,16 13:6 16:13,15 21:15 22:15 28:8,25 29:4 29:5,10,22 30:18 31:16 32:17,20 33:3 33:8,10 34:23 36:8 38:11 40:14 41:13 41:18,20,21 42:3,11 42:20,21 44:4,24 45:8,12,16 48:16 51:9 52:10 53:10,21 54:19 56:5 57:15 58:22 61:25 62:6 64:4 66:4 67:8 71:9 71:11,15 72:16,22 73:24 75:16 76:2,10 77:11 78:16 81:8,18 81:20,23 82:14 83:3 83:17 84:23 87:2,7 87:9,11,15,20,23 88:6,9,23 89:3,10 89:13,14,25 90:4 94:15,24 95:4,18 97:8 98:15 99:18 100:8,13 101:3,17 101:22 102:4,14 103:4 104:13,15,18 105:7,10,12 106:11 107:2,23,24 109:12 112:7,13,18,23 113:17,19,24 114:11,17,20,23 115:3,8,18,20 116:10,17,21,25 117:9 118:24 119:4 119:6,7,8,12,13,15 119:18,22,23,24 120:7,18,20,21,24	121:5,10,12 122:19 122:20 123:11,21 126:9 127:16 128:19,22 129:6,6 129:10 130:6,16,24 132:2,14,22,25 133:5 134:4,12,14 134:21 135:14,20 136:8,22 137:17,17 137:21,21 138:2,8 139:4,8,17 140:8,17 140:24 141:4 143:16,20,25 144:14 145:9,18 147:5,8,14,25 148:3 148:7,8,23 149:25 150:8 151:9 152:6 152:13,14,17 153:6 153:16 154:7,13,21 155:4,16 158:19 159:2,12 164:4 165:23 168:21 171:6 172:13,14 175:6 176:15 177:6 178:16 180:8,18 181:22 182:2,5,8,13 182:15,22 183:22 184:11,16,17,25 185:7,17 186:6,8 187:7,10,21 191:4 191:20 192:11,13 192:19,22 193:4 195:8,12,14,16,23 196:17,21 198:6,15 200:16,21,23,25 201:9,22,22,24 202:2,3,8,19,19 204:25 206:7,18 207:10 209:11,25 210:5,9,19,20 212:3 213:20 214:2,20 215:11,22 216:7,12 216:14,19,21,24,25 217:3,7,10,18,22 217:24 218:8,19,22 218:23 219:14,20 220:2 221:10,17 225:2 227:12 229:12 230:13 231:18 232:11 235:23 239:25 240:4,18 241:22 243:12,22 244:13 245:18,22 246:4,10 247:24 248:2,11,18 248:19 249:5,22 251:14 254:13,18 254:25 255:3,24 256:2,17 257:8,12	257:14,23 258:11 259:9 260:20 261:3 261:7 264:23,25 265:7,10,14 266:5,7 266:11 267:11 268:13,16 269:19 270:8 272:17,25 273:4,21 274:11,16 275:5,10,14,16,18 275:24 276:2,10,13 278:22,23 280:4,5,6 282:4 284:21 285:14,21 286:24 287:10,23 289:19 290:5,8 292:7,18 293:11 296:25,25 297:4,12,18 services (2) 90:2 117:8 Service's (1) 61:8 Service/Human (1) 255:18 serving (1) 258:12 SESSION (1) 4:23 set (22) 33:9,10 48:23 57:11 71:19 81:4 82:4,18 86:25 87:3,6,15 116:22 120:23 125:5 142:22 150:11 237:17 261:17 291:11 295:7,14 sets (2) 87:4,16 setting (1) 89:4 seven (3) 146:8,20,23 share (1) 163:13 SHEET (1) 298:1 sheets (1) 39:18 she'll (2) 12:4 57:5 shoot (1) 233:18 shopping (1) 155:13 short (3) 52:15 127:7 257:16 shorten (1) 115:10 shortened (1)	20:17 shorter (2) 65:10 252:4 shortly (1) 258:22 shot (1) 236:4 should've (1) 141:22 showed (2) 148:14 246:21 shown (2) 138:9 253:21 shows (1) 255:6 sick (5) 12:21 85:10,15 213:10 276:5 side (1) 123:7 sign (11) 83:18 109:18 111:7,9 190:23 191:6,16,18 195:2 215:10 227:2 signature (18) 109:17 111:7 190:6 190:16,17 191:25 192:5,9 194:22,23 195:16,22 196:8,9 196:22 207:14 238:5 297:8 signatures (2) 110:19 196:12 signed (8) 5:12,14 177:20 192:2 192:5 230:2,15 253:3 signs (3) 110:22,24 215:20 similar (2) 231:24 250:5 simple (1) 237:25 simpler (1) 184:14 simplify (1) 116:16 simply (1) 184:10 simultaneously (1) 110:14 single (2) 190:18 218:25 sit (1) 282:12 sitting (5) 96:14,22,23 97:5 283:6	situation (7) 88:12 118:22 123:13 158:20 177:11 179:17 247:11 situations (5) 153:10,12,12 162:15 169:6 six (6) 25:18 133:10,11,16 242:16 276:21 slightest (1) 148:16 slip (3) 109:17 111:7,10 small (3) 52:17 205:6 232:2 Snyder (5) 1:4 4:23 283:23 293:17,18 social (1) 117:8 soft (1) 96:23 solve (1) 188:12 somebody (8) 62:5 100:3,4 113:18 131:23 247:9 257:13 258:17 someone's (2) 85:10 201:15 something's (1) 79:4 soon (2) 125:20 198:11 sorry (4) 209:11 239:7 269:5 278:24 sort (9) 52:11 115:8 143:15 154:8 185:14 220:14 262:7 273:21 274:7 sought (1) 176:20 sound (1) 266:22 sounding (1) 61:20 source (4) 140:5 223:10 262:7 288:25 sources (1) 211:15 Southold (3) 30:19 99:15,17 space (2) 12:4,8
---	--	---	--	--

span (1) 185:21 speak (18) 7:21 19:2 39:5 42:6 49:8 50:19 63:17 96:14 112:10 163:11 193:9 214:21 217:9 261:10 267:16,20 272:14 274:3 speaking (12) 54:17 96:11,19,21 120:25 122:5 135:5 211:11 242:13 267:15 270:12,13 special (15) 43:25 44:18 48:2,10 48:14 49:6 66:8 89:23 90:2 232:4,15 232:22 233:2,9,14 specific (41) 29:25 30:6 33:8 41:2 42:12 45:17 58:14 75:25 123:25 136:14 154:17 156:5 159:2 160:7 165:11,14 167:23 176:13 179:15,16 179:25 180:6 181:10 193:24 197:3 198:13,16 201:6,24 203:16 213:7 220:12 224:8 234:18,21 254:24 261:4,6 266:18 270:12 272:11 specifically (24) 9:4 18:10 29:11 48:6 60:22 88:5 110:13 118:10 119:6 139:22 166:16 172:16 179:9 192:8 192:18 193:12,25 213:18 247:3 255:9 264:24 272:25 290:25 291:3 specification (22) 48:7,23 60:18 66:5 71:16,20 83:3 98:8 99:19,22 101:12 102:8 106:11 107:3 115:4,5,12 130:17 198:5 227:6 232:19 255:5 specifications (29) 39:10 98:10,15,20 105:7 109:13 113:17 114:12,25 116:18 117:3,14	119:18,19,20,21 120:22 129:7 132:3 139:13 151:10 195:13 215:23 225:3 232:11,14 235:24 246:11 268:14 specifics (3) 172:20 173:3 194:19 specified (2) 84:6 199:17 specs (1) 63:10 speculate (1) 182:24 spending (2) 20:3 51:18 Spies (1) 211:21 split (1) 217:15 spoke (4) 153:2 211:12,12 270:14 spoken (2) 166:23 230:6 staff (2) 205:3,4 stamp (1) 245:9 stamped (1) 207:13 stand (1) 266:20 standard (5) 46:17,22 85:22 106:11 251:17 standards (8) 28:5 31:12 46:8 49:21 78:4 100:5 113:25 140:6 standing (2) 96:19,21 Stanley (3) 237:24 238:6,22 start (3) 192:16 258:18 291:22 started (3) 17:4,14 170:15 starting (1) 87:12 starts (1) 68:10 state (71) 2:20 6:7,14 25:9 29:4 32:17 33:10 46:8,12 46:17,22 52:8,12,23 52:25 53:2,8,13,17	53:20,24 54:3,9 60:7,13 61:3,7,14 61:16 63:4,11 64:6 64:15,20 65:5 66:11 67:21 70:20,22 73:7 73:17,18,20 74:2,23 75:22,24 115:19 116:11 119:10,11 119:11 120:3,17,20 122:19 125:3,4 132:3 134:14 135:13 139:10,24 140:11,11,14 144:13 182:19 254:13 276:2 295:5 stated (4) 47:11 66:25 186:23 236:19 statement (5) 117:16 223:11 240:3 245:25 250:20 statements (1) 190:25 states (7) 1:2 44:18 66:9 77:8 221:15 236:22 253:6 statewide (1) 46:9 state-approved (1) 61:11 stating (1) 81:25 status (26) 28:10 61:10 74:4 76:22 77:4 99:3,6 118:11 167:20,25 169:10,13,24 170:6 176:23 177:25 180:9 213:9 214:2,5 231:7 246:9,13 275:4 276:14 291:20 statute (13) 138:17 139:19,20,22 139:23,25 142:23 144:19 156:24 157:3,7,9 279:8 stay (3) 54:10 105:18 240:2 step (3) 70:11 157:14 210:15 steps (1) 88:14 stick (1) 36:2 stips (1) 7:12 stipulate (2)	7:2 148:20 stipulated (5) 5:2,6,10 50:10 82:8 stop (1) 62:13 Strategies (1) 54:2 street (4) 35:25 68:12 69:19 73:8 streets (1) 68:18 strike (8) 113:14 131:17 154:17 155:6 192:16 210:9 221:25 230:10 string (1) 227:3 stringent (1) 63:21 structuring (1) 47:17 student (1) 68:13 stuff (1) 119:5 subcategories (1) 65:7 subdivided (1) 106:21 subheading (4) 43:24 81:4 98:23 105:2 subject (17) 10:12 55:5,20 90:22 91:7 162:10 168:8 169:20,25 176:10 176:14 177:7 179:5 179:13 247:5 261:21 278:12 subjective (1) 201:14 submission (1) 191:3 submit (4) 112:6,22 113:2 206:11 submitted (3) 129:16,17 206:19 subordinate (5) 24:19 31:23 87:18 88:16,21 subordinates (3) 31:2,5,22 Subscribed (1) 294:8 subsequent (4) 26:2 43:15 178:2	249:3 substance (12) 28:15 66:18 160:12 166:21 168:3,23 264:3,7 267:4,5,24 284:7 suburban (1) 118:15 success (1) 269:22 successful (4) 20:15 26:7,11 77:9 successfully (2) 78:9 165:19 sufficient (1) 171:4 Suffolk (108) 1:13,13 2:14 4:5,11 13:4,6 16:21 17:7 18:2 21:2 23:6 30:14 33:9 34:24 40:14 41:11,23 44:25 45:8 47:25 49:13 60:14,21,23 61:4,13,15,18,24 62:6 63:4,20 64:3,6 71:5 72:13,18,19,21 73:23 75:16 77:10 78:15 83:16 86:25 86:25 92:13 99:6 117:6 119:12,15,18 119:22,23,25 120:6 120:7,17,21,24 121:12 123:21 128:11 134:3,15 139:3,7,16 140:7 143:24 145:8,17 148:2,8 151:9 152:6 152:16 153:6,15 154:7 158:18 159:2 159:12 165:22 166:9 168:21 171:6 171:15,15 177:5 180:18 181:22 185:16,25 186:4,5 191:4 204:25 216:21 219:25 247:25 249:4,21 273:14 280:5 297:11,17 suggest (2) 134:7 284:15 suggested (1) 184:7 suggesting (2) 95:16 135:21 suggestion (2) 50:3 184:12 suggests (1)
--	--	---	---	--

106:15 suit (1) 182:18 sum (2) 168:3 284:7 summary (1) 277:10 summer (2) 4:24 188:14 superior (1) 88:22 supervise (1) 164:18 supervised (1) 24:18 supervision (3) 30:23,25 164:19 supervisor (9) 87:19 88:15 114:21 118:19 164:8 204:13,14 209:2,5 supervisors (4) 31:23 164:24 165:10 169:5 supervisory (5) 29:17 164:11 176:12 177:11 179:17 supplement (2) 151:11 152:7 supplemented (1) 141:20 supplements (1) 140:13 supply (1) 205:8 support (1) 205:3 sure (53) 7:19,20 9:9,12 11:19 12:11 14:2,9 17:3 21:6 22:10 23:7 29:11 31:10 37:4 47:20 48:5 51:16 65:9,11 70:12 76:15 85:9,13 86:12 89:5 93:3 105:22 113:11 116:23 126:20 133:13 137:7,8 152:25 156:12 157:16 162:14 168:22 183:13 188:8 204:2 211:5 217:4 241:25 252:18 268:24 278:6,9 280:25 283:18 286:9 290:3 swear (1) 148:12 switching (1)	31:13 sworn (5) 5:11,14 6:4 294:8 295:7 synonymous (1) 79:9 system (3) 70:11 91:9,10 <hr/> T <hr/> T (2) 295:2,2 TA (1) 226:23 take (35) 8:4,8 9:14 36:25 37:9 65:23 70:15 98:3 99:15 123:16 124:5 129:22 130:18 131:3 145:25 156:4 168:12 171:16 208:8 210:15 228:2 228:10,12,12 229:19 235:24 236:13 243:8 244:18,20 257:16 270:21 278:4,9 283:21 taken (10) 28:24 131:20 166:2 177:6,9 190:4 214:4 243:19 244:21 257:18 takes (3) 99:12 197:13 276:5 talk (2) 103:10 110:13 talked (4) 62:2 194:12 248:21 262:6 talking (16) 23:16 40:25 74:24 85:13 98:14 101:2 122:3 123:12 149:2 163:6 251:22,23 266:13 290:24,25 291:3 taught (1) 233:18 tax (1) 117:9 Taxation (1) 30:15 taxpayer (2) 182:17 186:11 techniques (1) 120:12 teeny (1) 205:14	telephone (4) 171:12 174:9 200:7 223:25 tell (16) 8:2 30:7 37:14 50:23 54:19,21 67:21 98:4 221:24 234:16 245:5 261:24 273:8 279:15,16 286:14 telling (4) 24:13 59:13 133:22 142:3 temporary (18) 133:4,7,9 136:18 138:3,7,24 139:2,6 139:18 140:6,12,14 140:18,22 141:5 144:18 188:14 term (6) 25:19,20 115:9 179:3 186:4 290:5 terminate (1) 96:2 terminated (10) 279:13 280:9,15 282:9,13,16,18,19 282:22 283:11 termination (3) 279:20,24 283:3 terminology (5) 114:24 123:10 149:3 189:19 277:17 terms (6) 22:4 30:10 36:9 114:25 162:8 207:22 test (29) 46:4,6 47:7,23 51:14 99:13 132:7,8,9 190:9 227:19,21,22 228:3,8,10,17 234:24 235:4,5,20 235:25 236:9,12,13 241:11,12 242:15 242:17 tested (1) 29:8 testified (11) 6:5 7:8 9:18 10:3,9 125:24 147:15 160:18 186:16 187:25 262:10 testify (7) 10:10 12:19,24 37:15 37:22 50:9 55:16 testifying (5) 6:20,21,25 7:6 51:20 testimony (17) 8:14,18,20,20 9:3	10:13 11:8 153:23 159:16 188:3 217:11 237:6 262:14,16 287:22 295:6,9 tests (6) 56:5 132:17 223:14 228:13 286:10 287:9 text (17) 32:14 37:11 38:6 79:13 155:21,23 156:6 190:21 192:9 220:15 221:14,22 222:5 232:2 235:3 245:18 297:7 thank (10) 143:7 152:3 161:17 184:9 205:20 242:21 249:16 252:6 278:14 294:2 thereabouts (2) 254:22,23 Theresa (1) 226:22 they'd (1) 48:21 thing (11) 7:3 54:24 64:22 78:14 115:2 123:19 133:3 135:11 147:16 220:20 240:14 things (29) 19:24 21:6 34:21 38:8 39:12 42:16 44:9 52:17,24 53:12 57:21 69:14 116:13 116:16 118:23 120:3,4,6 121:6 132:11 146:12 161:11 173:18 176:25 182:17,21 205:5 251:22 255:25 think (83) 7:2 11:3 18:17 19:17 23:6 25:18 36:10 38:22 48:12 50:7,8 50:9,18 52:18 53:24 57:18 62:3,10 63:8 65:10 68:3 73:7 76:8 89:2 95:22 98:21 111:6 114:8 115:4,4 121:20 123:12 126:12,20 127:12,23 131:7 134:16,18,25 142:2 142:5 145:4 146:11 146:18 151:15	153:22 154:24 155:15 172:11 177:16 178:4 183:18 184:4,14 186:21,22 187:13 188:5 189:20 191:11 205:22 208:21 211:17 214:10 230:25 235:10 237:2,7 240:12 242:22 246:4 267:13 268:8 274:5 276:20 277:12,14 278:6 280:2 281:13,18 293:16 thinks (1) 58:25 third (4) 130:21 131:2 240:22 241:8 THOMAS (1) 1:4 THOMPSON (2) 3:3 4:24 thought (6) 34:21 54:7 183:10 216:4 262:8 264:7 threat (1) 189:13 threatening (1) 188:11 threats (1) 188:15 three (28) 27:3,10,11 32:4,7 84:25 91:13,16 92:3 99:3 124:2 130:9,12 130:22 133:19 157:14 196:12 219:2 222:3,4 224:5 234:6 238:10,12,17 258:8 264:10 278:23 threshold (1) 275:23 tie (2) 92:9 224:21 time (93) 5:9 8:17 9:11 11:2 14:7 16:5 18:3 20:18 22:4,20 24:15 27:2 28:18 31:17 34:15 41:15 47:9 50:10,13 57:10 59:16 65:10 66:9 70:14 71:7,19 72:6 81:15 85:15,15 86:7 88:16 111:4,17
---	--	---	---	---

125:5 127:22 128:16 131:11,25 132:15 133:13 143:18 145:23 156:4 163:4,5,19 166:23 168:11,24 169:8,17 170:7 172:17,25 173:15 175:3,11,19 177:24 178:7 179:24 181:3 181:7 183:14,15,15 187:19 188:3 193:8 193:15,20 194:2 195:20 198:7,10,16 204:3 207:19 211:24 213:10 225:13,24 235:19 235:19 236:8 240:22 247:10 253:11 258:16 271:7 278:15 294:5	231:22 233:8 248:21 259:16 260:18 261:12 278:16 282:12 today's (1) 258:25 token (1) 7:20 told (8) 49:7 57:20 101:6 170:12 173:2 176:15,18 275:25 Tom (2) 4:23 283:23 Tons (1) 119:5 top (19) 91:13,16 92:3,7,9 170:9 190:22 192:6 194:21 200:11 203:13 220:14,18 226:8 234:6,19 250:11,24 255:16 total (4) 85:2 128:8 227:15 228:17 touched (1) 196:14 tour (3) 245:20 246:7,17 town (10) 17:2 30:13,13 99:7,14 99:16 106:21 114:21 118:15,18 towns (7) 18:8 97:19,22 98:9,11 98:17 296:19 trained (1) 76:13 trainee (33) 14:14,16,19,22 16:8 16:13,20 17:8,14,25 18:3,6 20:12,13,18 20:19,23 21:13 22:7 22:8 23:8,9,24 24:3 24:20 25:24 26:8,11 26:22 27:5 164:3 165:18 208:12 trainees (5) 18:8 24:10,20 26:20 29:18 training (54) 16:9 20:15 23:11,23 24:3,9,14,16 25:9 60:3,6,8,9,11,12 61:2 63:3 64:5,21 64:23 65:5,12 66:10 66:12 68:11,17 69:7 69:18 70:10,16,18	71:2,18 72:5,9 75:12 76:23 77:2 143:11,13 144:12 145:8,14 165:20 193:11,13,15 194:9 194:12,15 208:10 233:17 253:15 255:12 transaction (1) 203:18 transactions (2) 193:4 194:18 transcript (5) 7:24 12:4,8 80:4 295:8 transcription (1) 298:9 transcripts (1) 273:10 transfer (1) 176:21 travel (1) 25:11 treasurer (2) 218:24 219:3 trial (1) 5:9 Trosco (2) 222:8 229:15 trouble (1) 245:13 true (10) 43:22 90:9 156:15 235:21 240:15 241:5 262:12,14 268:14 295:8 Trust (1) 40:18 trustees (2) 186:18,21 truthfully (2) 12:19,24 try (5) 162:12 170:25 193:4 215:2 277:21 trying (9) 59:12 76:3,9 100:19 134:5 146:18 151:3 184:20 207:21 turn (4) 37:5 52:13 53:3 71:21 turning (6) 52:9 77:8 79:10 194:21 197:2 243:2 Twelve (1) 28:14 twice (3) 240:21 241:7 274:18	two (57) 17:3 20:17,19 25:16 25:22 28:9 40:19 52:17 54:6 61:23 62:5 66:24 83:19 84:25 92:5 113:6 125:13 126:20,21 127:25 130:25 131:5 132:10 155:2 155:2 157:5,8 190:17 196:4 197:20 200:15 219:6,9,11,12 224:22 225:3,8,15 225:15,22,23 229:9 230:24 239:19 240:2,17 241:13,14 242:14,15,17 250:11 251:22 270:7 279:8,9 two-page (2) 65:14 137:15 two-year (1) 20:14 TYAS (1) 4:24 type (5) 95:18,22 129:13 191:20 206:24 types (2) 120:5 233:2 typewritten (1) 238:5 <hr/> U <hr/> Uh-huh (5) 44:2 66:13,17 192:12 280:18 ultimately (3) 176:24 270:14 293:2 uncertified (3) 285:7 288:8,18 unclassified (4) 114:18,20 116:22 119:7 unclear (1) 63:15 unconnected (1) 97:3 uncontested (1) 62:16 undergoes (1) 23:24 79:19 98:23 underlining (1) 133:23 underneath (10) 32:6 109:6 142:24	200:13,13 221:15 222:2 232:2,3 250:14 understand (36) 6:20 7:5 8:2 18:15 39:24 47:21 50:3 53:15 56:6,21 61:12 64:9,10 71:12 75:5 76:4 89:11 92:21 115:10 121:8 136:11 162:13 166:7 200:23 217:12 225:18 233:15 244:3 251:9 254:15 273:2 276:16 279:12 282:21 287:6,22 understanding (5) 18:24 19:5 279:22 283:11 289:18 understood (4) 136:3 230:21 279:7 281:8 undertake (1) 172:8 undertaken (1) 137:18 undertook (1) 287:24 underwent (2) 23:24,24 undisputed (1) 62:4 Uniondale (1) 3:23 unique (1) 63:13 unit (2) 203:7 226:19 UNITED (1) 1:2 units (3) 24:17,17 29:20 university (1) 16:9 unofficial (1) 120:11 unrelated (1) 162:15 updates (1) 143:10 use (18) 42:14 82:14 83:8 90:21 93:20 95:12 115:9,23 120:16 179:2 186:4 191:9 219:4,5,11 280:12 282:16 283:16 useful (1)
--	--	--	--	---

76:7	215:16 217:10	158:8 159:19,22	148:12 149:23	147:13,15 150:24
uses (1)	218:15,18,24 219:2	161:3 162:19	163:6 169:6 205:9	153:20 154:2
139:17	219:3,3,4,13,16,19	178:21 182:21	242:13 251:22,23	156:24 157:6,15,22
usually (3)	220:20,25 221:13	183:24 201:15	253:20 258:22	157:24,25 160:15
33:17 150:9 205:18	222:18,25 223:6,21	213:6,14 216:11	270:12,13 277:13	161:10 172:2 179:4
<hr/>	227:12 230:20	217:5 219:11	we've (9)	181:14 183:6,21
V	231:8 234:24	249:18 277:21	50:8 54:25 108:3,4	187:24 189:16
V (1)	242:12 246:7	278:9 283:16	135:18 269:13	213:4 214:23 217:2
298:2	252:23 253:8 256:5	wanted (3)	272:24 278:4,6	217:11 220:9
vacancy (2)	256:7,15 273:18	48:6,23 166:12	WHEREOF (1)	226:14 228:11
221:5,6	280:6 286:14 287:3	wants (2)	295:14	235:12 241:20
vacation (3)	287:7,14,17,20	94:8 149:7	whichever (1)	262:4 265:3 271:11
79:22 85:11,15	289:17,25 291:2,4,6	wasn't (12)	109:9	275:9 277:16,18
valid (2)	villages (6)	111:15 113:11 138:9	whistle (8)	281:21 295:6,9,14
130:8 258:7	97:20,22 98:9,12,17	141:23 150:11	153:9,13 155:9,11	298:4
validly (1)	296:19	178:20 183:13	159:11 160:16,16	witnesses (2)
244:14	village's (2)	185:9 188:8,9	162:18	50:9 62:3
valuation (1)	174:20 256:10	199:19 269:5	wide (1)	witness's (1)
77:18	violate (1)	waste (2)	93:13	159:16
variables (1)	102:4	172:17 235:19	widely (1)	woman (2)
85:8	violated (4)	way (19)	196:18	11:20,21
varies (3)	143:20 264:9 265:5	35:20,25 54:16 70:4	widespread (1)	wondered (1)
196:18 201:4 206:21	274:12	76:6 93:3,21 115:22	91:24	263:23
various (12)	violating (1)	122:16 126:3	WIGDOR (1)	wonderful (1)
20:25 30:18 42:19	160:21	152:13 158:13	3:3	59:2
120:2,3,5 127:16	violation (8)	189:23 195:19	willing (16)	word (8)
132:23 135:19	75:18,19 95:18 100:8	200:4 225:21 242:3	91:16 93:14 124:3	96:15 115:23 152:22
169:3 172:22 193:7	101:22 254:12,20	271:18 295:12	130:9,11,12,23	152:22 191:9 221:2
venture (1)	255:7	wealth (1)	149:5,6,10,16	222:4 282:19
148:13	violations (1)	146:9	240:20,25 242:11	worded (1)
verbatim (1)	184:17	website (7)	242:24 258:8	179:10
148:12	virtually (1)	35:12,16,18 103:21	window (1)	words (2)
version (5)	62:15	108:14,17 296:23	36:6	100:20 276:21
43:21 122:22 142:8	volumes (1)	week (11)	windowsill (1)	work (24)
142:17 231:22	148:15	54:6 82:9 84:2,12,14	96:22	33:19 68:14 82:9,9
versus (2)	<hr/>	84:24,24 85:16,21	withdraw (1)	84:2,24 85:16,25
64:24 68:21	W	86:15 279:14	97:5	86:5 101:4 155:14
Veterans (4)	W (1)	weeks (8)	withdrawing (1)	164:18 203:20
2:2,15 4:14 6:9	3:14	84:25 126:23 127:5	93:7	211:11 229:4 238:9
videotape (1)	wait (3)	155:2,3 261:16	withdrawn (3)	238:11 245:19
96:16	93:22 225:10,14	279:9,9	41:22 44:16 219:21	246:6,17 268:16
viewed (1)	waived (1)	welcome (1)	witness (95)	287:17,19 291:24
230:12	5:5	38:13	6:3 11:21 12:10 18:11	worked (6)
village (88)	walking (1)	went (4)	18:12,13,14,17 19:6	26:20 32:16 86:15
1:8 3:19 21:16 23:3	242:21	15:4 34:21 176:2	19:12,13,25 24:2	246:21,25 247:10
30:21,22 47:10	want (57)	260:6	35:17 37:8 38:7,13	workers (5)
80:13 94:16 99:7	19:19 23:25 34:3	weren't (4)	51:19 54:12 55:14	212:11,13,18 213:19
100:3 106:22 114:4	36:12,14 41:5 53:25	40:16 178:22 244:11	55:15 57:6,8 59:13	214:3
114:8,9 118:17	55:25 57:21,25 58:4	286:11	62:12 75:21 79:15	working (21)
121:2 143:19	61:19,20 63:14 75:3	we'll (8)	89:3 93:4 97:15	17:14 69:8,15 85:12
166:16,25 167:17	87:21 89:5 93:3	12:12 116:5 123:16	103:14 106:8	155:12 170:15
167:20 168:16	94:2 96:2 101:14	125:6 138:12	107:22 116:10	179:3,13 181:3,7,11
170:11 175:12,13	103:12 108:7	146:24 167:5 228:8	118:24 122:6	181:18 183:14
175:19,25 176:5,24	112:12,25 113:9	we're (29)	125:23 127:15,19	186:25 188:4,12,17
179:6 182:18	115:16 137:11	17:16 19:23 20:2	127:24 132:21,24	243:10 255:10
183:24,25 186:16	145:19,20 146:11	23:16 39:25 53:17	134:19 135:2,10,24	258:17 291:14
186:17,22 191:17	146:13 147:11	54:6,15 62:9 70:19	136:13 138:6,10	workings (2)
195:8 203:24 214:5	148:19 150:24	76:8 102:19 122:3,5	142:19,22 144:18	201:14 214:22
214:23,25 215:9,12	153:21 156:4,11,22	123:12 146:7	145:15,21 146:9	works (2)

24:21 208:22 world (1) 101:7 wouldn't (8) 39:5,8 148:15 151:7 224:2 240:8 244:18 246:20 would've (14) 54:7,8 106:16 177:20 180:5 198:20,22 212:10 216:4,5 256:8 280:16 281:17 288:15 writing (4) 198:19 200:6 210:6 223:24 writings (4) 119:24 120:23 140:5 199:3 written (20) 26:16 39:17 49:13 55:7,11 56:2,5 67:9 67:12,13 91:9 148:17 209:20,23 210:11 227:19,21 228:2 251:19 288:7 wrong (1) 282:22 <hr/> X <hr/> X (3) 1:3,17 136:8 <hr/> Y <hr/> yeah (11) 38:16 46:5 140:21 165:8 187:15 189:24 232:20 240:7 253:20 269:4 271:9 year (24) 24:2 25:19,22 26:7 85:16 86:10,16 143:3 162:24 168:14,14 171:16 172:9 226:18,20 236:10,12 245:20 246:18,19,22,25 291:14,17 years (34) 9:15 19:11,25 20:17 20:19 21:7 22:4 25:17,18 28:9 30:8 48:11 54:6 99:3 124:17 125:6,13 126:20 127:25 143:5 185:17 241:11,13,14 242:4 242:14,15,17,20	251:13,15,24 275:13,15 yesterday (3) 167:3 259:2,14 York (33) 1:2,18 2:2,16,20 3:6,6 3:13,23 4:7,15 6:10 29:4 61:9 63:18 65:4 66:11 69:15 116:11 119:11 134:14 135:13 137:16,20 139:9 140:10,11,14 231:3 254:13 275:25 295:5 296:24 <hr/> Z <hr/> zero (2) 84:25 85:12 Zwilling (269) 4:16 6:25 8:19 10:6 11:7 12:11 19:19 20:5 23:13,15 28:18 33:5,7,15 34:14 35:13,24 36:11,18 37:18,23 38:8,17 39:6,11,24 40:12,21 41:17 42:2,6,16 43:20 45:3,11 46:3 47:4,20 49:2,7,24 50:15,22 51:7 52:2 52:15,22 53:7,19 54:17 55:6,22 56:15 56:20 57:13,25 58:9 58:11,15,23 59:5,9 59:15 61:7 63:6,16 64:12 65:2 66:21 67:5,11,20 68:24 69:9,13,23 70:17,24 71:9 72:15,23 73:7 73:17 74:11,18,21 75:13,21 76:3,20 81:19 85:5,7,23 86:11,18 87:7,21 88:2,7,23 89:9 92:15,18,24 93:6,10 94:19 95:3,8 98:14 100:24 101:2,13 102:2,10 103:8 106:4 111:4,17,20 112:2,8,10 115:18 116:4,9 118:7,21 119:5 120:25 121:6 121:18,25 122:9 123:6,11,16 125:23 127:4,11,21 132:6 132:10 134:7 135:16 136:24 137:3,10 140:16,21	141:7,13 142:16 143:14 144:6,16,24 145:11,23 146:6,18 147:11 148:11,19 151:12,22 152:3,9 152:25 153:19 155:8 156:20,22 157:3 158:4,11,23 159:6,8,17 160:14 161:3,17 162:4,13 163:2,7 165:7 169:12 171:10 172:10,19 173:2,17 175:4,15 178:17,19 180:23,25 182:3,11 182:16 183:20 184:8 185:3 186:3 187:12 188:2,21,23 189:3,15,22 191:8 195:5,7,15 200:19 200:21 201:13 205:22 212:21,23 214:21 215:7,15 216:10,23 217:5,14 223:3 228:9,12 230:14 235:10 237:7 240:5 243:15 256:18 259:2,5,8,14 260:5,9,16 261:11 262:6,13,17 263:4 265:2 271:8,10 272:16 274:18 276:17 277:4,6,11 277:20 278:6 283:16,19,23 290:23 294:4 Zwilling's (1) 144:5 <hr/> \$ <hr/> \$100 (1) 228:8 \$5,000 (2) 84:7 86:21 <hr/> 0 <hr/> 02PM (1) 137:2 07 (1) 1:7 08PM (1) 154:3 <hr/> 1 <hr/> 1 (12) 36:20,22 37:7,11,13 37:17 79:17 82:4,18 113:6 296:15 298:7 1B (1)	82:24 1:00:01PM (1) 171:18 1:00:03PM (1) 171:20 1:00:21PM (1) 172:4 1:00:22PM (2) 172:5,6 1:00:33PM (1) 172:10 1:00:37PM (1) 172:12 1:00:38PM (1) 172:14 1:00:54PM (1) 172:19 1:01:05PM (1) 172:24 1:01:08PM (1) 173:2 1:01:11PM (2) 173:4,5 1:01:23PM (1) 173:8 1:01:24PM (1) 173:9 1:01:25PM (1) 173:10 1:01:40PM (1) 173:12 1:01:44PM (1) 173:15 1:01:46PM (1) 173:16 1:01:48PM (1) 173:17 1:01:52PM (1) 173:20 1:01:53PM (1) 173:21 1:02:04PM (1) 173:23 1:02:07PM (1) 173:25 1:02:19PM (1) 174:6 1:02:21PM (1) 174:7 1:02:24PM (1) 174:8 1:02:31PM (1) 174:11 1:02:32PM (1) 174:12 1:02:42PM (1) 174:14 1:02:44PM (1)	174:15 1:02:45PM (1) 174:16 1:02:47PM (1) 174:17 1:02:50PM (1) 174:18 1:02:54PM (1) 174:20 1:03:00PM (1) 174:22 1:03:02PM (2) 174:23,24 1:03:05PM (1) 174:25 1:03:08PM (1) 175:2 1:03:10PM (1) 175:4 1:03:17PM (1) 175:8 1:03:18PM (2) 175:9,10 1:03:21PM (1) 175:12 1:03:24PM (1) 175:13 1:03:27PM (1) 175:15 1:03:30PM (1) 175:17 1:03:31PM (1) 175:18 1:03:34PM (1) 175:20 1:03:35PM (1) 175:21 1:03:44PM (1) 175:22 1:03:45PM (1) 175:23 1:03:49PM (1) 175:25 1:03:57PM (1) 176:4 1:04:03PM (1) 176:8 1:04:04PM (1) 176:9 1:04:06PM (1) 176:11 1:04:17PM (1) 176:13 1:04:23PM (1) 176:15 1:04:29PM (1) 176:17 1:04:32PM (1)
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176:19 1:04:54PM (1) 176:24 1:04:59PM (1) 177:3 1:05:01PM (1) 177:5 1:05:10PM (1) 177:8 1:05:11PM (1) 177:9 1:05:14PM (1) 177:10 1:05:19PM (1) 177:13 1:05:21PM (2) 177:14,15 1:05:23PM (1) 177:16 1:05:25PM (1) 177:17 1:05:26PM (1) 177:18 1:05:28PM (1) 177:19 1:05:33PM (1) 177:22 1:05:39PM (1) 177:24 1:05:52PM (1) 178:4 1:05:56PM (1) 178:6 1:06:01PM (1) 178:8 1:06:05PM (1) 178:9 1:06:08PM (1) 178:11 1:06:11PM (1) 178:12 1:06:27PM (1) 178:17 1:06:29PM (1) 178:18 1:06:30PM (1) 178:19 1:06:34PM (1) 178:21 1:06:42PM (1) 179:2 1:06:45PM (1) 179:4 1:06:51PM (2) 179:7,8 1:06:53PM (1) 179:9 1:06:59PM (1)	179:12 1:07:06PM (1) 179:15 1:07:14PM (1) 179:18 1:07:17PM (1) 179:20 1:07:21PM (1) 179:23 1:07:22PM (1) 179:24 1:07:41PM (1) 180:3 1:07:43PM (1) 180:4 1:07:44PM (1) 180:5 1:07:51PM (1) 180:6 1:07:58PM (1) 180:10 1:08:04PM (1) 180:11 1:08:12PM (1) 180:12 1:08:14PM (1) 180:14 1:08:15PM (2) 180:15,16 1:08:33PM (1) 180:23 1:08:34PM (1) 180:24 1:08:35PM (1) 180:25 1:08:46PM (2) 181:5,6 1:08:51PM (1) 181:8 1:08:52PM (1) 181:9 1:08:55PM (1) 181:10 1:08:58PM (1) 181:11 1:09:02PM (1) 181:13 1:09:06PM (1) 181:14 1:09:11PM (2) 181:16,17 1:09:17PM (1) 181:20 1:09:25PM (1) 181:21 1:09:48PM (1) 182:3 1:09:55PM (1)	182:7 1:10:02PM (1) 182:11 1:10:06PM (1) 182:14 1:10:09PM (1) 182:16 1:10:34PM (1) 183:3 1:10:50PM (1) 183:9 1:10:52PM (1) 183:10 1:10:58PM (1) 183:13 1:11:05PM (1) 183:16 1:11:14PM (1) 183:20 1:11:36PM (1) 184:4 1:11:42PM (1) 184:8 1:11:43PM (1) 184:10 1:11:49PM (2) 184:12,14 1:11:56PM (1) 184:18 1:11:59PM (1) 184:20 1:12:02PM (2) 184:22,23 1:12:19PM (1) 185:3 1:12:22PM (1) 185:5 1:12:23PM (1) 185:6 1:12:31PM (1) 185:9 1:12:32PM (1) 185:11 1:12:33PM (1) 185:12 1:12:35PM (1) 185:13 1:12:48PM (1) 185:16 1:12:56PM (1) 185:20 1:12:57PM (1) 185:21 1:13:00PM (1) 185:23 1:13:02PM (1) 185:24 1:13:07PM (1)	186:3 1:13:14PM (1) 186:5 1:13:15PM (1) 186:7 1:13:44PM (1) 186:15 1:13:59PM (1) 186:20 1:14:00PM (1) 186:21 1:14:04PM (1) 186:23 1:14:18PM (1) 187:3 1:14:20PM (1) 187:5 1:14:22PM (1) 187:6 1:14:28PM (1) 187:9 1:14:29PM (1) 187:10 1:14:35PM (1) 187:12 1:14:38PM (1) 187:15 1:14:39PM (1) 187:16 1:14:40PM (1) 187:17 1:14:59PM (1) 187:23 1:15:01PM (1) 188:2 1:15:13PM (1) 188:8 1:15:20PM (1) 188:11 1:15:36PM (1) 188:16 1:15:50PM (1) 188:21 1:15:51PM (2) 188:22,23 1:15:53PM (1) 188:25 1:15:55PM (1) 189:2 1:15:56PM (2) 189:3,4 1:16:01PM (1) 189:7 1:16:02PM (1) 189:8 1:16:11PM (2) 189:12,13 1:16:12PM (1)	189:14 1:16:13PM (1) 189:15 1:16:15PM (1) 189:18 1:16:25PM (1) 189:22 1:16:29PM (1) 189:24 10 (13) 48:11 86:9 92:10 131:7 185:17 190:8 190:16 192:6 194:21 215:5 218:13 282:4 297:8 10-2-92 (1) 251:7 10/2/92 (1) 251:4 10:00 (1) 2:4 10:00:01AM (1) 6:15 10:00:02AM (1) 6:16 10:00:10AM (1) 6:20 10:00:15AM (1) 6:23 10:00:19AM (1) 6:25 10:00:25AM (2) 7:4,5 10:00:27AM (1) 7:7 10:00:30AM (1) 7:8 10:00:35AM (1) 7:10 10:00:38AM (1) 7:11 10:00:41AM (1) 7:13 10:00:48AM (2) 7:15,16 10:01:05AM (1) 7:23 10:01:06AM (1) 7:24 10:01:09AM (1) 7:25 10:01:15AM (1) 8:4 10:01:26AM (1) 8:9 10:01:39AM (1) 8:14 10:01:42AM (1)
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8:16 10:01:43AM (1) 8:17 10:01:49AM (1) 8:19 10:01:54AM (1) 8:22 10:01:56AM (2) 8:24 9:2 10:01:57AM (1) 9:3 10:02:02AM (2) 9:6,7 10:02:05AM (1) 9:9 10:02:09AM (1) 9:11 10:02:12AM (1) 9:13 10:02:16AM (1) 9:14 10:02:17AM (1) 9:15 10:02:19AM (1) 9:16 10:02:26AM (1) 9:19 10:02:35AM (1) 9:21 10:02:39AM (2) 9:23,24 10:02:44AM (1) 10:2 10:02:47AM (1) 10:3 10:02:56AM (2) 10:5,6 10:03:06AM (2) 10:11,12 10:03:09AM (1) 10:14 10:03:15AM (1) 10:16 10:03:20AM (1) 10:18 10:03:21AM (1) 10:19 10:03:23AM (1) 10:21 10:03:26AM (1) 10:22 10:03:31AM (1) 10:24 10:03:32AM (1) 10:25 10:03:36AM (1) 11:3 10:03:45AM (1)	11:5 10:03:49AM (1) 11:7 10:03:52AM (1) 11:10 10:03:53AM (1) 11:11 10:04:00AM (1) 11:13 10:04:02AM (1) 11:14 10:04:05AM (1) 11:16 10:04:06AM (1) 11:17 10:04:11AM (1) 11:18 10:04:16AM (1) 11:19 10:04:18AM (1) 11:20 10:04:20AM (1) 11:21 10:04:21AM (1) 11:22 10:04:24AM (1) 11:23 10:04:32AM (1) 12:3 10:04:37AM (1) 12:7 10:04:42AM (1) 12:10 10:04:43AM (1) 12:11 10:04:48AM (1) 12:14 10:04:49AM (3) 12:15,16,17 10:04:56AM (1) 12:20 10:04:58AM (1) 12:21 10:05:00AM (1) 12:22 10:05:01AM (1) 12:23 10:05:07AM (1) 13:2 10:05:12AM (1) 13:3 10:05:17AM (1) 13:5 10:05:36AM (1) 13:8 10:05:40AM (1) 13:10 10:05:46AM (1)	13:11 10:05:51AM (1) 13:14 10:06:05AM (2) 13:18,19 10:06:08AM (1) 13:21 10:06:11AM (1) 13:23 10:06:13AM (1) 13:24 10:06:19AM (1) 14:2 10:06:20AM (1) 14:3 10:06:25AM (1) 14:6 10:06:27AM (1) 14:7 10:06:33AM (1) 14:9 10:06:38AM (1) 14:10 10:06:42AM (1) 14:12 10:06:48AM (1) 14:13 10:06:50AM (1) 14:14 10:06:59AM (1) 14:15 10:07:05AM (1) 14:17 10:07:07AM (1) 14:18 10:07:12AM (1) 14:20 10:07:21AM (1) 14:21 10:07:25AM (1) 14:23 10:07:27AM (1) 14:24 10:07:30AM (1) 15:2 10:07:37AM (1) 15:3 10:07:45AM (1) 15:6 10:07:57AM (1) 15:7 10:07:59AM (2) 15:8,9 10:08:02AM (1) 15:10 10:08:08AM (1) 15:12 10:08:14AM (1)	15:15 10:08:15AM (1) 15:16 10:08:16AM (1) 15:17 10:08:17AM (1) 15:18 10:08:21AM (1) 15:20 10:08:28AM (1) 15:22 10:08:31AM (1) 15:23 10:08:35AM (1) 15:25 10:08:39AM (1) 16:3 10:08:43AM (1) 16:4 10:08:47AM (1) 16:6 10:08:54AM (1) 16:7 10:09:05AM (1) 16:11 10:09:12AM (1) 16:12 10:09:17AM (1) 16:15 10:09:19AM (1) 16:17 10:09:24AM (1) 16:19 10:09:33AM (1) 16:20 10:09:41AM (1) 16:24 10:09:43AM (1) 16:25 10:09:45AM (1) 17:2 10:09:53AM (1) 17:5 10:09:58AM (1) 17:7 10:10:02AM (1) 17:8 10:10:12AM (1) 17:11 10:10:20AM (1) 17:12 10:10:26AM (1) 17:15 10:10:34AM (1) 17:18 10:10:39AM (1) 17:19 10:10:43AM (1)	17:21 10:10:46AM (1) 17:22 10:10:48AM (1) 17:23 10:10:53AM (1) 17:24 10:11:01AM (1) 18:4 10:11:02AM (1) 18:5 10:11:10AM (1) 18:7 10:11:22AM (1) 18:11 10:11:45AM (1) 18:21 10:11:50AM (1) 18:23 10:12:32AM (1) 19:17 10:12:34AM (1) 19:19 10:12:50AM (1) 20:2 10:12:53AM (1) 20:5 10:12:54AM (1) 20:8 10:12:55AM (1) 20:9 10:12:59AM (1) 20:10 10:13:07AM (1) 20:13 10:13:32AM (1) 20:20 10:13:43AM (1) 20:24 10:13:45AM (1) 20:25 10:13:57AM (1) 21:6 10:14:01AM (1) 21:8 10:14:06AM (1) 21:11 10:14:15AM (1) 21:12 10:14:31AM (1) 21:17 10:14:37AM (1) 21:18 10:14:46AM (1) 21:21 10:14:49AM (1) 21:22 10:14:54AM (2)
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21:25 22:2	25:12	27:23	31:4	34:10
10:15:14AM (1)	10:19:29AM (1)	10:22:07AM (1)	10:26:36AM (1)	10:30:56AM (1)
22:8	25:14	27:24	31:7	34:14
10:15:29AM (1)	10:19:34AM (1)	10:22:10AM (1)	10:26:40AM (1)	10:30:57AM (1)
22:11	25:16	27:25	31:9	34:16
10:15:34AM (1)	10:19:39AM (1)	10:22:22AM (1)	10:26:42AM (1)	10:30:58AM (1)
22:13	25:18	28:3	31:10	34:17
10:15:52AM (1)	10:19:43AM (1)	10:22:38AM (1)	10:26:55AM (1)	10:31:05AM (1)
22:17	25:20	28:8	31:12	34:19
10:16:01AM (1)	10:19:49AM (1)	10:22:52AM (1)	10:27:08AM (1)	10:31:13AM (1)
22:21	25:22	28:12	31:16	34:23
10:16:13AM (1)	10:20:00AM (1)	10:23:01AM (1)	10:27:18AM (1)	10:31:20AM (2)
22:22	25:23	28:14	31:18	34:25 35:2
10:16:25AM (1)	10:20:11AM (1)	10:23:10AM (1)	10:27:26AM (1)	10:31:22AM (1)
22:25	26:4	28:15	31:21	35:3
10:16:27AM (1)	10:20:12AM (1)	10:23:22AM (1)	10:27:39AM (1)	10:31:27AM (1)
23:2	26:5	28:18	31:25	35:6
10:16:31AM (2)	10:20:16AM (1)	10:23:24AM (1)	10:27:42AM (1)	10:31:36AM (1)
23:4,5	26:7	28:19	32:3	35:9
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23:6	26:9	28:20	32:12	35:11
10:16:54AM (1)	10:20:29AM (1)	10:23:27AM (1)	10:28:47AM (1)	10:31:44AM (1)
23:8	26:13	28:21	32:16	35:13
10:17:12AM (1)	10:20:38AM (1)	10:23:30AM (1)	10:29:03AM (1)	10:31:50AM (1)
23:13	26:16	28:23	32:19	35:16
10:17:13AM (1)	10:20:43AM (1)	10:23:41AM (1)	10:29:15AM (2)	10:31:52AM (1)
23:14	26:18	29:3	32:23,24	35:17
10:17:14AM (1)	10:20:53AM (1)	10:23:48AM (2)	10:29:16AM (1)	10:31:54AM (1)
23:15	26:19	29:6,7	33:2	35:19
10:17:23AM (1)	10:21:05AM (1)	10:23:59AM (1)	10:29:17AM (1)	10:31:55AM (1)
23:19	26:24	29:10	33:3	35:20
10:17:37AM (2)	10:21:07AM (1)	10:24:06AM (1)	10:29:20AM (2)	10:32:03AM (1)
23:21,22	26:25	29:13	33:5,6	35:24
10:17:52AM (1)	10:21:17AM (1)	10:24:10AM (1)	10:29:21AM (1)	10:32:13AM (2)
23:25	27:3	29:15	33:7	36:4,5
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24:5	27:4	29:19	33:8	36:7
10:18:04AM (1)	10:21:30AM (1)	10:24:26AM (1)	10:29:37AM (1)	10:32:18AM (1)
24:7	27:7	29:21	33:12	36:8
10:18:05AM (1)	10:21:32AM (1)	10:24:28AM (1)	10:29:49AM (1)	10:32:22AM (1)
24:8	27:8	29:22	33:15	36:10
10:18:15AM (1)	10:21:36AM (1)	10:24:35AM (1)	10:29:50AM (1)	10:32:28AM (1)
24:12	27:10	29:25	33:16	36:11
10:18:19AM (1)	10:21:37AM (1)	10:24:39AM (1)	10:29:51AM (1)	10:32:38AM (1)
24:13	27:11	30:3	33:17	36:16
10:18:28AM (1)	10:21:44AM (1)	10:24:54AM (1)	10:30:07AM (1)	10:32:43AM (1)
24:16	27:13	30:6	33:22	36:18
10:18:58AM (1)	10:21:46AM (1)	10:25:06AM (1)	10:30:16AM (1)	10:33:13AM (1)
24:24	27:14	30:10	33:24	36:19
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25:4	27:16	30:13	34:4	36:21
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25:5	27:18	30:22	34:6	36:24
10:19:10AM (1)	10:21:59AM (1)	10:26:09AM (1)	10:30:37AM (1)	10:34:10AM (1)
25:6	27:20	30:24	34:7	36:25
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25:8	27:21	30:25	34:9	37:4,5
10:19:26AM (1)	10:22:04AM (1)	10:26:21AM (1)	10:30:42AM (1)	10:35:07AM (1)

37:8	41:9,10	44:7	46:25	50:20
10:35:08AM (1)	10:39:37AM (1)	10:42:20AM (1)	10:44:59AM (1)	10:48:55AM (1)
37:9	41:15	44:8	47:4	50:22
10:35:17AM (1)	10:39:40AM (1)	10:42:24AM (1)	10:45:10AM (1)	10:49:02AM (1)
37:13	41:17	44:10	47:8	51:2
10:35:42AM (1)	10:39:41AM (1)	10:42:29AM (1)	10:45:22AM (1)	10:49:03AM (1)
37:14	41:18	44:13	47:12	51:3
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37:18	41:20	44:15	47:14	51:7
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37:19	41:23	44:17	47:20	51:10
10:36:00AM (1)	10:40:07AM (1)	10:42:53AM (1)	10:45:44AM (1)	10:49:43AM (1)
37:23	41:25	44:22	47:24	51:22
10:36:05AM (2)	10:40:08AM (1)	10:42:54AM (1)	10:45:45AM (1)	10:49:49AM (1)
38:2,3	42:2	44:23	47:25	52:2
10:36:16AM (1)	10:40:13AM (1)	10:43:02AM (1)	10:45:53AM (1)	10:50:21AM (1)
38:7	42:5	45:3	48:4	52:14
10:36:19AM (1)	10:40:14AM (1)	10:43:05AM (1)	10:46:03AM (1)	10:50:22AM (1)
38:8	42:6	45:5	48:5	52:15
10:36:42AM (1)	10:40:20AM (2)	10:43:16AM (1)	10:46:16AM (1)	10:50:25AM (1)
38:16	42:9,10	45:11	48:10	52:17
10:36:43AM (1)	10:40:21AM (1)	10:43:23AM (1)	10:46:21AM (1)	10:50:36AM (1)
38:17	42:11	45:15	48:12	52:22
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38:22	42:14	45:17	48:13	53:5
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38:23	42:16	45:20	48:16	53:7
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38:25	42:23	45:23	48:19	53:15
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39:2	43:3	45:25	48:21	53:19
10:37:44AM (2)	10:41:27AM (2)	10:44:00AM (1)	10:46:59AM (1)	10:51:24AM (1)
39:6,7	43:6,7	46:3	48:24	53:23
10:37:48AM (1)	10:41:33AM (1)	10:44:02AM (1)	10:47:04AM (1)	10:51:28AM (1)
39:8	43:10	46:5	49:2	54:2
10:37:55AM (1)	10:41:34AM (1)	10:44:09AM (1)	10:47:06AM (1)	10:51:35AM (1)
39:11	43:11	46:8	49:4	54:5
10:38:11AM (1)	10:41:42AM (1)	10:44:18AM (1)	10:47:13AM (1)	10:51:51AM (1)
39:20	43:13	46:11	49:7	54:15
10:38:20AM (1)	10:41:43AM (1)	10:44:22AM (1)	10:47:15AM (1)	10:51:56AM (1)
39:24	43:14	46:13	49:9	54:17
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40:8	43:16	46:15	49:10	54:24
10:38:40AM (1)	10:41:48AM (1)	10:44:28AM (1)	10:47:41AM (1)	10:52:19AM (1)
40:10	43:17	46:17	49:16	55:6
10:38:42AM (1)	10:41:54AM (1)	10:44:30AM (1)	10:47:45AM (1)	10:52:29AM (1)
40:12	43:19	46:18	49:17	55:12
10:38:44AM (1)	10:41:56AM (1)	10:44:33AM (1)	10:47:48AM (1)	10:52:31AM (1)
40:13	43:20	46:20	49:19	55:13
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40:15	43:22	46:21	49:20	55:20
10:38:52AM (1)	10:42:09AM (2)	10:44:39AM (1)	10:48:05AM (2)	10:52:49AM (1)
40:18	43:23,24	46:22	49:24,25	55:22
10:38:57AM (1)	10:42:13AM (2)	10:44:41AM (1)	10:48:18AM (1)	10:53:07AM (1)
40:21	44:2,3	46:23	50:6	56:6
10:39:19AM (1)	10:42:18AM (1)	10:44:44AM (1)	10:48:40AM (1)	10:53:13AM (1)
41:7	44:6	46:24	50:15	56:8
10:39:22AM (2)	10:42:19AM (1)	10:44:49AM (1)	10:48:52AM (1)	10:53:14AM (1)

56:9	59:11	63:19	11:04:27AM (1)	11:07:22AM (1)
10:53:16AM (1)	10:55:31AM (1)	10:59:52AM (1)	66:7	69:13
56:11	59:15	63:20	11:04:43AM (1)	11:07:40AM (2)
10:53:22AM (1)	10:55:40AM (1)	10:59:58AM (1)	66:13	69:21,22
56:13	59:20	63:23	11:04:44AM (1)	11:07:46AM (1)
10:53:24AM (1)	10:55:43AM (2)	100 (6)	66:14	69:24
56:15	59:22,23	2:2,15 4:14 189:21	11:04:52AM (1)	11:07:47AM (1)
10:53:26AM (2)	10:55:56AM (1)	254:21,23	66:17	69:25
56:16,17	60:2	100-year (1)	11:04:54AM (1)	11:08:01AM (1)
10:53:32AM (1)	10:56:04AM (1)	40:13	66:18	70:6
56:19	60:3	10003 (1)	11:05:00AM (2)	11:08:04AM (1)
10:53:33AM (1)	10:56:08AM (1)	3:6	66:20,21	70:8
56:20	60:5	103 (1)	11:05:01AM (2)	11:08:10AM (1)
10:53:42AM (1)	10:56:20AM (1)	296:20	66:22,23	70:11
56:24	60:6	10523 (1)	11:05:04AM (1)	11:08:18AM (1)
10:53:50AM (1)	10:56:26AM (1)	3:13	66:25	70:13
57:5	60:9	108 (1)	11:05:12AM (1)	11:08:26AM (1)
10:54 (1)	10:56:29AM (1)	296:21	67:5	70:17
58:11	60:10	1086 (2)	11:05:15AM (1)	11:08:39AM (1)
10:54:07AM (1)	10:56:39AM (1)	205:16,18	67:7	70:22
57:13	60:14	11 (9)	11:05:21AM (1)	11:08:41AM (1)
10:54:23AM (1)	10:56:45AM (1)	190:11 191:21,24	67:10	70:24
57:21	60:16	192:8,21 195:3	11:05:28AM (1)	11:08:45AM (2)
10:54:27AM (1)	10:56:48AM (1)	197:2,18 297:10	67:11	71:3,4
57:23	60:18	11:00:02AM (1)	11:05:30AM (1)	11:08:46AM (1)
10:54:29AM (1)	10:56:53AM (1)	63:24	67:12	71:5
57:25	60:20	11:00:26AM (1)	11:05:34AM (1)	11:09:00AM (1)
10:54:37AM (1)	10:56:58AM (1)	64:8	67:14	71:9
58:4	60:23	11:00:31AM (1)	11:05:47AM (2)	11:09:02AM (1)
10:54:39AM (2)	10:57:03AM (1)	64:10	67:19,20	71:11
58:6,7	60:25	11:00:35AM (1)	11:05:48AM (1)	11:09:07AM (1)
10:54:44AM (1)	10:57:16AM (1)	64:12	67:21	71:14
58:9	61:6	11:00:45AM (1)	11:05:51AM (1)	11:09:08AM (1)
10:54:45AM (1)	10:57:19AM (1)	64:17	67:22	71:15
58:10	61:7	11:02:20AM (1)	11:06:05AM (1)	11:09:17AM (1)
10:54:49AM (1)	10:57:33AM (1)	64:19	68:6	71:19
58:13	61:12	11:02:31AM (1)	11:06:07AM (1)	11:09:29AM (1)
10:54:52AM (1)	10:57:44AM (1)	64:20	68:7	71:21
58:15	61:17	11:02:48AM (1)	11:06:47AM (1)	11:09:33AM (2)
10:54:54AM (1)	10:57:50AM (1)	64:25	68:19	71:23,24
58:17	61:19	11:02:52AM (1)	11:06:57AM (1)	11:09:36AM (1)
10:54:55AM (1)	10:58:17AM (1)	65:2	68:22	72:2
58:18	62:9	11:02:56AM (1)	11:06:58AM (1)	11:09:37AM (1)
10:54:57AM (1)	10:58:45AM (1)	65:4	68:24	72:3
58:19	62:18	11:03:08AM (1)	11:07:00AM (1)	11:10:21AM (2)
10:54:58AM (1)	10:58:49AM (1)	65:9	69:2	72:14,15
58:20	62:20	11:03:30AM (1)	11:07:01AM (1)	11:10:34AM (1)
10:55:05AM (1)	10:58:57AM (1)	65:13	69:3	72:21
58:23	62:22	11:03:41AM (1)	11:07:04AM (1)	11:10:35AM (1)
10:55:16AM (1)	10:59:15AM (1)	65:18	69:4	72:23
59:4	62:24	11:04:10AM (1)	11:07:06AM (1)	11:10:38AM (1)
10:55:19AM (1)	10:59:18AM (1)	65:22	69:5	72:25
59:5	63:6	11:04:11AM (1)	11:07:16AM (1)	11:10:41AM (1)
10:55:22AM (1)	10:59:43AM (1)	65:23	69:9	73:4
59:7	63:14	11:04:19AM (2)	11:07:18AM (1)	11:10:43AM (1)
10:55:24AM (1)	10:59:46AM (1)	66:2,3	69:11	73:7
59:9	63:16	11:04:21AM (1)	11:07:20AM (1)	11:10:49AM (2)
10:55:25AM (1)	10:59:51AM (1)	66:4	69:12	73:10,11

11:11:10AM (1) 73:17	11:14:23AM (1) 77:12	11:17:51AM (2) 80:16,17	11:21:35AM (1) 83:23	11:24:37AM (1) 86:21
11:11:34AM (1) 74:3	11:14:33AM (1) 77:16	11:17:52AM (1) 80:18	11:21:37AM (1) 83:24	11:24:42AM (1) 86:24
11:11:54AM (1) 74:10	11:14:35AM (1) 77:17	11:17:57AM (1) 80:20	11:21:40AM (1) 83:25	11:24:50AM (1) 87:3
11:11:55AM (1) 74:11	11:14:44AM (1) 77:21	11:17:58AM (2) 80:21,22	11:21:57AM (1) 84:5	11:24:54AM (1) 87:5
11:11:57AM (1) 74:13	11:14:46AM (1) 77:22	11:17:59AM (1) 80:23	11:22:02AM (1) 84:7	11:24:59AM (1) 87:7
11:12:10AM (1) 74:18	11:14:56AM (1) 78:2	11:18:02AM (1) 80:25	11:22:08AM (1) 84:9	11:25:02AM (1) 87:9
11:12:14AM (1) 74:20	11:15:07AM (1) 78:6	11:18:04AM (1) 81:2	11:22:11AM (1) 84:11	11:25:29AM (1) 87:10
11:12:15AM (1) 74:21	11:15:09AM (1) 78:7	11:18:16AM (1) 81:5	11:22:22AM (1) 84:12	11:25:42AM (1) 87:15
11:12:21AM (1) 74:24	11:15:12AM (1) 78:8	11:18:20AM (1) 81:7	11:22:29AM (1) 84:15	11:25:47AM (1) 87:17
11:12:37AM (1) 75:6	11:15:22AM (1) 78:13	11:18:26AM (1) 81:9	11:22:33AM (1) 84:16	11:26:00AM (1) 87:21
11:12:38AM (1) 75:8	11:15:28AM (1) 78:14	11:18:38AM (1) 81:13	11:22:39AM (1) 84:19	11:26:05AM (1) 87:25
11:12:39AM (1) 75:9	11:15:43AM (1) 78:19	11:18:56AM (1) 81:19	11:22:42AM (1) 84:21	11:26:06AM (1) 88:2
11:12:51AM (1) 75:13	11:15:48AM (1) 78:21	11:19:02AM (1) 81:22	11:23:00AM (1) 84:22	11:26:10AM (1) 88:4
11:12:54AM (1) 75:15	11:15:51AM (2) 78:23,24	11:19:04AM (2) 81:24,25	11:23:20AM (1) 85:5	11:26:14AM (1) 88:7
11:12:57AM (1) 75:17	11:15:54AM (1) 79:2	11:19:19AM (1) 82:5	11:23:21AM (1) 85:6	11:26:16AM (1) 88:10
11:13:01AM (1) 75:19	11:15:56AM (1) 79:3	11:19:39AM (1) 82:10	11:23:22AM (1) 85:7	11:26:17AM (1) 88:11
11:13:03AM (1) 75:21	11:16:02AM (1) 79:5	11:19:50AM (1) 82:13	11:23:34AM (1) 85:14	11:26:22AM (1) 88:13
11:13:08AM (1) 75:24	11:16:03AM (1) 79:6	11:20:01AM (1) 82:16	11:23:46AM (2) 85:18,19	11:26:37AM (1) 88:18
11:13:12AM (1) 76:3	11:16:06AM (1) 79:8	11:20:11AM (1) 82:20	11:23:57AM (1) 85:23	11:26:52AM (1) 88:23
11:13:27AM (1) 76:10	11:16:14AM (1) 79:10	11:20:13AM (1) 82:21	11:24:00AM (1) 85:25	11:27:06AM (1) 89:5
11:13:39AM (1) 76:15	11:16:40AM (1) 79:15	11:20:25AM (1) 82:24	11:24:02AM (1) 86:3	11:27:09AM (1) 89:9
11:13:40AM (1) 76:16	11:16:48AM (1) 79:16	11:20:45AM (1) 83:6	11:24:04AM (1) 86:5	11:27:12AM (1) 89:11
11:13:41AM (1) 76:17	11:17:08AM (1) 79:23	11:20:55AM (1) 83:9	11:24:14AM (1) 86:9	11:27:18AM (1) 89:14
11:13:43AM (1) 76:18	11:17:23AM (1) 79:25	11:21:00AM (1) 83:11	11:24:20AM (1) 86:11	11:27:43AM (2) 89:18,19
11:13:44AM (1) 76:19	11:17:26AM (1) 80:3	11:21:04AM (1) 83:12	11:24:22AM (1) 86:13	11:33:23AM (1) 89:21
11:13:47AM (1) 76:20	11:17:28AM (1) 80:5	11:21:11AM (1) 83:15	11:24:24AM (2) 86:14,15	11:33:37AM (1) 89:22
11:14:05AM (1) 77:5	11:17:29AM (1) 80:6	11:21:12AM (1) 83:16	11:24:33AM (1) 86:17	11:33:53AM (1) 90:3
11:14:11AM (1) 77:7	11:17:39AM (1) 80:10	11:21:28AM (1) 83:20	11:24:34AM (1) 86:18	11:33:56AM (1) 90:6
11:14:12AM (1) 77:8	11:17:50AM (1) 80:15	11:21:32AM (1) 83:21	11:24:36AM (1) 86:20	11:33:57AM (1) 90:7

11:33:59AM (1)	93:22	98:2	100:25	104:8,9
90:8	11:38:01AM (1)	11:42:51AM (1)	11:45:51AM (1)	11:49:19AM (1)
11:34:00AM (1)	94:2	98:3	101:2	104:10
90:9	11:38:03AM (1)	11:42:57AM (1)	11:45:58AM (1)	11:49:23AM (1)
11:34:04AM (1)	94:4	98:6	101:6	104:11
90:11	11:38:04AM (1)	11:42:58AM (1)	11:46:03AM (1)	11:49:26AM (1)
11:34:05AM (1)	94:5	98:7	101:8	104:13
90:12	11:38:24AM (1)	11:42:59AM (1)	11:46:05AM (1)	11:49:27AM (1)
11:34:20AM (1)	94:12	98:8	101:9	104:14
90:13	11:38:25AM (1)	11:43:04AM (1)	11:46:06AM (1)	11:49:37AM (1)
11:34:32AM (1)	94:13	98:10	101:10	104:16
90:17	11:38:26AM (1)	11:43:15AM (1)	11:46:16AM (1)	11:49:41AM (1)
11:34:36AM (1)	94:14	98:13	101:13	104:18
90:19	11:38:32AM (1)	11:43:16AM (2)	11:46:19AM (1)	11:49:47AM (1)
11:34:42AM (1)	94:15	98:14,16	101:16	104:20
90:22	11:38:47AM (1)	11:43:18AM (1)	11:46:22AM (3)	11:49:48AM (1)
11:34:46AM (1)	94:19	98:17	101:18,19,21	104:21
90:24	11:38:48AM (2)	11:43:20AM (1)	11:46:24AM (1)	11:49:51AM (1)
11:34:57AM (1)	94:20,21	98:18	101:22	104:23
91:4	11:38:53AM (1)	11:43:30AM (1)	11:46:26AM (1)	11:49:57AM (1)
11:34:58AM (1)	94:23	98:21	101:24	104:24
91:5	11:39:04AM (1)	11:43:37AM (1)	11:46:28AM (1)	11:50:14AM (1)
11:35:05AM (1)	95:3	98:22	102:2	105:6
91:7	11:39:08AM (1)	11:43:44AM (1)	11:46:30AM (1)	11:50:28AM (1)
11:35:21AM (1)	95:7	99:2	102:3	105:9
91:10	11:39:09AM (1)	11:43:49AM (1)	11:46:31AM (1)	11:50:34AM (1)
11:35:40AM (1)	95:8	99:5	102:4	105:11
91:15	11:39:13AM (1)	11:43:53AM (1)	11:46:45AM (1)	11:50:46AM (1)
11:35:41AM (1)	95:10	99:7	102:9	105:14
91:16	11:39:24AM (1)	11:44:03AM (1)	11:46:46AM (2)	11:50:49AM (1)
11:35:48AM (1)	95:14	99:10	102:10,11	105:15
91:18	11:40:05AM (1)	11:44:08AM (1)	11:46:53AM (1)	11:50:54AM (1)
11:36:01AM (1)	96:4	99:12	102:12	105:16
91:23	11:40:15AM (1)	11:44:24AM (1)	11:46:58AM (1)	11:50:58AM (1)
11:36:09AM (1)	96:10	99:18	102:15	105:18
92:2	11:40:22AM (1)	11:44:47AM (1)	11:46:59AM (1)	11:51:12AM (1)
11:36:19AM (1)	96:13	99:23	102:16	105:22
92:4	11:40:33AM (1)	11:44:52AM (2)	11:47:31AM (1)	11:51:13AM (1)
11:36:21AM (1)	96:17	99:24,25	102:25	105:23
92:5	11:40:38AM (1)	11:44:53AM (1)	11:47:49AM (1)	11:51:14AM (1)
11:36:30AM (1)	96:20	100:2	103:8	105:24
92:8	11:40:52AM (1)	11:44:55AM (1)	11:47:56AM (1)	11:51:17AM (1)
11:36:46AM (1)	97:2	100:3	103:10	105:25
92:11	11:41:27AM (1)	11:45:11AM (1)	11:48:02AM (1)	11:51:23AM (1)
11:36:56AM (1)	97:7	100:6	103:13	106:4
92:15	11:41:28AM (1)	11:45:17AM (2)	11:48:13AM (1)	11:51:29AM (1)
11:36:59AM (2)	97:8	100:10,11	103:18	106:7
92:17,18	11:41:38AM (1)	11:45:18AM (1)	11:48:25AM (1)	11:51:36AM (1)
11:37:02AM (2)	97:12	100:12	103:22	106:10
92:20,21	11:41:48AM (1)	11:45:22AM (1)	11:49:08AM (1)	11:51:48AM (1)
11:37:06AM (7)	97:14	100:14	104:2	106:16
92:23,24 93:2,6,9,10	11:41:50AM (1)	11:45:26AM (1)	11:49:09AM (1)	11:51:53AM (1)
93:11	97:15	100:17	104:3	106:19
11:37:18AM (1)	11:42:03AM (1)	11:45:34AM (1)	11:49:11AM (1)	11:52:13AM (1)
93:12	97:16	100:19	104:5	107:2
11:37:44AM (1)	11:42:24AM (1)	11:45:48AM (1)	11:49:12AM (1)	11:52:23AM (1)
93:19	97:21	100:24	104:6	107:6
11:37:53AM (1)	11:42:50AM (1)	11:45:49AM (1)	11:49:17AM (2)	11:52:36AM (1)

107:9	110:13	113:6	116:9	119:14
11:52:46AM (1)	11:56:37AM (1)	11:59:03AM (2)	12:02:19PM (1)	12:06:05PM (1)
107:11	110:17	113:10,11	116:10	119:16
11:52:47AM (2)	11:56:38AM (1)	11:59:19AM (1)	12:02:28PM (2)	12:06:06PM (1)
107:16,17	110:18	113:14	116:14,15	119:17
11:52:51AM (1)	11:56:48AM (1)	11:59:24AM (1)	12:02:36PM (1)	12:06:11PM (1)
107:19	110:22	113:16	116:17	119:19
11:52:53AM (1)	11:56:54AM (2)	11:59:42AM (1)	12:02:49PM (1)	12:06:15PM (1)
107:20	110:23,24	113:22	116:21	119:21
11:52:58AM (1)	11:56:59AM (1)	11:59:43AM (1)	12:02:55PM (1)	12:06:29PM (1)
107:22	111:2	113:24	116:23	120:2
11:52:59AM (1)	11:57:02AM (1)	11:59:49AM (1)	12:03:06PM (1)	12:06:36PM (1)
107:24	111:4	114:2	116:24	120:5
11:53:01AM (1)	11:57:04AM (2)	11:59:53AM (1)	12:03:20PM (1)	12:06:43PM (1)
108:2	111:5,6	114:3	117:4	120:8
11:53:16AM (1)	11:57:11AM (1)	11501 (1)	12:03:21PM (1)	12:06:59PM (1)
108:6	111:8	4:7	117:5	120:11
11:53:38AM (1)	11:57:16AM (1)	11556-0926 (1)	12:03:41PM (1)	12:07:03PM (1)
108:10	111:11	3:23	117:11	120:12
11:53:51AM (1)	11:57:21AM (1)	11788 (2)	12:03:51PM (2)	12:07:08PM (1)
108:15	111:13	4:15 6:10	117:15,16	120:14
11:54:56AM (1)	11:57:29AM (1)	12 (8)	12:03:53PM (1)	12:07:13PM (1)
108:20	111:17	15:23 86:10 88:14	117:17	120:15
11:54:57AM (1)	11:57:30AM (1)	219:23 220:3 225:3	12:03:54PM (1)	12:07:19PM (1)
108:21	111:18	225:8 297:11	117:18	120:16
11:55:00AM (1)	11:57:35AM (1)	12:00:03PM (1)	12:04:00PM (1)	12:07:27PM (1)
108:23	111:20	114:4	117:19	120:19
11:55:03AM (2)	11:57:42AM (1)	12:00:17PM (1)	12:04:12PM (1)	12:07:28PM (1)
108:25 109:2	111:21	114:8	117:21	120:20
11:55:05AM (1)	11:57:46AM (1)	12:00:20PM (1)	12:04:19PM (1)	12:07:46PM (1)
109:4	111:22	114:10	117:24	120:25
11:55:09AM (1)	11:57:48AM (1)	12:00:23PM (1)	12:04:21PM (1)	12:07:50PM (1)
109:6	111:23	114:11	118:2	121:4
11:55:19AM (1)	11:57:54AM (2)	12:00:35PM (2)	12:04:22PM (1)	12:07:53PM (1)
109:9	111:25 112:2	114:15,16	118:3	121:6
11:55:23AM (1)	11:57:57AM (2)	12:00:37PM (1)	12:04:23PM (1)	12:07:56PM (2)
109:11	112:3,4	114:17	118:4	121:8,9
11:55:33AM (1)	11:57:58AM (1)	12:01 (1)	12:04:32PM (1)	12:07:57PM (1)
109:15	112:5	115:7	118:5	121:10
11:55:34AM (1)	11:58:03AM (1)	12:01:03PM (1)	12:04:36PM (1)	12:08:06PM (1)
109:16	112:8	114:23	118:7	121:13
11:55:48AM (1)	11:58:04AM (1)	12:01:16PM (1)	12:04:37PM (1)	12:08:10PM (1)
109:19	112:9	115:4	118:8	121:14
11:55:54AM (1)	11:58:05AM (1)	12:01:37PM (1)	12:05:18PM (1)	12:08:14PM (1)
109:22	112:10	115:12	118:21	121:15
11:55:58AM (1)	11:58:16AM (1)	12:01:41PM (1)	12:05:29PM (1)	12:08:16PM (1)
109:23	112:16	115:14	119:3	121:16
11:56:05AM (1)	11:58:18AM (1)	12:01:43PM (1)	12:05:31PM (1)	12:08:18PM (1)
110:2	112:17	115:15	119:5	121:17
11:56:06AM (1)	11:58:23AM (1)	12:01:53PM (1)	12:05:33PM (1)	12:08:20PM (1)
110:3	112:20	115:18	119:6	121:18
11:56:15AM (1)	11:58:24AM (1)	12:01:57PM (1)	12:05:43PM (1)	12:08:25PM (1)
110:6	112:21	115:21	119:8	121:21
11:56:18AM (1)	11:58:35AM (1)	12:02:12PM (1)	12:05:51PM (1)	12:08:26PM (2)
110:8	112:24	116:4	119:10	121:22,23
11:56:21AM (1)	11:58:36AM (1)	12:02:15PM (2)	12:05:52PM (1)	12:08:33PM (1)
110:10	112:25	116:7,8	119:11	121:25
11:56:28AM (1)	11:58:47AM (1)	12:02:17PM (1)	12:06:01PM (1)	12:08:42PM (1)

122:5	124:14	128:14	132:5	136:24
12:08:43PM (1)	12:11:10PM (1)	12:15:08PM (1)	12:19:21PM (1)	12:24:03PM (1)
122:6	124:17	128:18	132:6	137:3
12:08:45PM (2)	12:11:28PM (1)	12:15:15PM (1)	12:19:24PM (1)	12:24:10PM (1)
122:7,8	124:23	128:19	132:8	137:6
12:08:48PM (1)	12:11:36PM (1)	12:15:26PM (1)	12:19:27PM (1)	12:24:15PM (1)
122:9	125:2	128:22	132:10	137:10
12:08:51PM (1)	12:11:53PM (1)	12:15:29PM (1)	12:19:29PM (2)	12:24:19PM (1)
122:11	125:8	128:24	132:12,13	137:13
12:08:56PM (1)	12:11:59PM (1)	12:15:34PM (1)	12:19:33PM (1)	12:24:35PM (1)
122:12	125:11	129:2	132:14	137:18
12:09:01PM (1)	12:12:09PM (1)	12:15:39PM (1)	12:19:51PM (1)	12:24:38PM (1)
122:13	125:14	129:4	132:19	137:20
12:09:03PM (1)	12:12:17PM (1)	12:15:53PM (1)	12:20:08PM (1)	12:25:15PM (1)
122:14	125:17	129:8	133:2	137:24
12:09:08PM (1)	12:12:21PM (1)	12:15:54PM (1)	12:20:09PM (1)	12:25:44PM (1)
122:17	125:19	129:9	133:3	138:12
12:09:10PM (1)	12:12:33PM (1)	12:15:58PM (1)	12:20:16PM (1)	12:25:51PM (1)
122:18	125:23	129:11	133:6	138:13
12:09:23PM (1)	12:12:45PM (2)	12:16:10PM (1)	12:20:17PM (1)	12:25:52PM (1)
122:21	126:5,6	129:15	133:7	138:14
12:09:27PM (1)	12:12:52PM (1)	12:16:11PM (1)	12:20:21PM (1)	12:25:57PM (1)
122:23	126:8	129:16	133:9	138:15
12:09:28PM (1)	12:12:54PM (1)	12:16:21PM (1)	12:20:59PM (1)	12:25:58PM (1)
122:24	126:10	129:20	133:15	138:16
12:09:29PM (1)	12:12:58PM (1)	12:16:33PM (1)	12:21:09PM (1)	12:26:04PM (1)
122:25	126:11	129:24	133:19	138:19
12:09:30PM (1)	12:13:02PM (1)	12:16:34PM (1)	12:21:12PM (2)	12:26:06PM (1)
123:2	126:13	129:25	133:20,21	138:20
12:09:35PM (2)	12:13:14PM (1)	12:16:35PM (1)	12:21:21PM (1)	12:26:12PM (2)
123:3,4	126:16	130:2	133:25	138:23,24
12:09:38PM (1)	12:13:19PM (1)	12:16:36PM (1)	12:21:31PM (1)	12:26:15PM (1)
123:6	126:18	130:3	134:7	138:25
12:09:44PM (1)	12:13:22PM (1)	12:16:52PM (1)	12:21:36PM (1)	12:26:22PM (2)
123:9	126:20	130:8	134:9	139:5,6
12:09:46PM (1)	12:13:26PM (1)	12:17:15PM (1)	12:22:30PM (2)	12:26:28PM (1)
123:11	126:22	130:15	135:5,7	139:9
12:09:51PM (1)	12:13:38PM (1)	12:17:30PM (2)	12:22:33PM (1)	12:26:31PM (1)
123:14	127:3	130:20,21	135:10	139:12
12:09:56PM (1)	12:13:40PM (1)	12:17:38PM (1)	12:22:45PM (1)	12:26:36PM (1)
123:16	127:4	130:24	135:16	139:15
12:10:12PM (1)	12:13:47PM (1)	12:17:46PM (1)	12:23:08PM (1)	12:26:58PM (2)
123:18	127:7	131:3	135:25	140:2,3
12:10:13PM (1)	12:13:53PM (1)	12:17:55PM (1)	12:23:19PM (1)	12:26:59PM (1)
123:19	127:11	131:6	136:6	140:4
12:10:19PM (1)	12:13:59PM (1)	12:18:01PM (1)	12:23:42PM (2)	12:27:12PM (1)
123:22	127:14	131:9	136:16,17	140:9
12:10:20PM (1)	12:14:18PM (1)	12:18:03PM (1)	12:23:51PM (1)	12:27:13PM (1)
123:23	127:19	131:10	136:20	140:10
12:10:22PM (1)	12:14:21PM (1)	12:18:20PM (1)	12:23:53PM (1)	12:27:22PM (1)
123:24	127:21	131:11	136:21	140:13
12:10:47PM (1)	12:14:25PM (1)	12:18:41PM (2)	12:23:55PM (1)	12:27:28PM (1)
124:8	127:24	131:14,16	136:22	140:16
12:10:57PM (2)	12:14:27PM (2)	12:18:50PM (1)	12:23:58PM (1)	12:27:33PM (1)
124:11,12	128:2,3	131:18	136:23	140:19
12:11:00PM (1)	12:14:35PM (1)	12:18:59PM (1)	12:24 (1)	12:27:35PM (1)
124:13	128:6	131:22	137:2	140:20
12:11:04PM (1)	12:14:55PM (1)	12:19:20PM (1)	12:24:00PM (1)	12:27:36PM (1)

140:21	144:4,6	148:24,25	153:4,5	157:3
12:27:37PM (1)	12:30:46PM (1)	12:35:54PM (1)	12:40:08PM (1)	12:46:00PM (1)
140:22	144:9	149:5	153:8	157:13
12:27:42PM (1)	12:30:47PM (1)	12:35:55PM (1)	12:40:26PM (1)	12:46:23PM (1)
140:24	144:11	149:6	153:11	157:23
12:27:45PM (1)	12:30:48PM (1)	12:35:57PM (1)	12:40:34PM (1)	12:46:33PM (1)
141:2	144:12	149:7	153:14	158:4
12:27:48PM (1)	12:31:06PM (1)	12:36:01PM (1)	12:40:36PM (1)	12:46:42PM (1)
141:3	144:16	149:9	153:15	158:8
12:27:57PM (1)	12:31:15PM (1)	12:36:08PM (1)	12:40:50PM (1)	12:46:46PM (1)
141:6	144:21	149:12	153:19	158:11
12:27:58PM (1)	12:31:19PM (1)	12:36:21PM (1)	12:41 (1)	12:46:51PM (1)
141:7	144:24	149:17	154:3	158:14
12:27:59PM (1)	12:31:38PM (1)	12:36:30PM (1)	12:41:11PM (1)	12:46:54PM (2)
141:8	145:6	149:20	154:5	158:16,17
12:28:04PM (1)	12:31:49PM (1)	12:36:42PM (1)	12:41:12PM (1)	12:47:09PM (1)
141:9	145:11	149:24	154:6	158:22
12:28:09PM (1)	12:32:08PM (1)	12:36:45PM (1)	12:41:13PM (1)	12:47:12PM (2)
141:11	145:19	150:2	154:7	158:23,24
12:28:12PM (1)	12:32:14PM (1)	12:36:56PM (1)	12:41:38PM (1)	12:47:20PM (1)
141:13	145:23	150:6	154:12	158:25
12:28:20PM (1)	12:32:32PM (2)	12:37:03PM (1)	12:41:55PM (1)	12:47:30PM (1)
141:17	146:4,6	150:9	154:16	159:5
12:28:23PM (1)	12:32:46PM (1)	12:37:21PM (1)	12:42:04PM (1)	12:47:31PM (1)
141:19	146:13	150:11	154:18	159:6
12:28:34PM (1)	12:32:57PM (1)	12:37:32PM (1)	12:42:17PM (1)	12:47:33PM (1)
141:23	146:18	150:15	154:22	159:7
12:28:38PM (1)	12:33:06PM (1)	12:37:40PM (1)	12:42:36PM (1)	12:47:34PM (1)
142:2	146:22	150:16	155:6	159:8
12:28:41PM (1)	12:33:10PM (1)	12:37:50PM (1)	12:42:39PM (1)	12:47:51PM (1)
142:3	146:24	150:20	155:8	159:15
12:28:45PM (1)	12:33:21PM (1)	12:37:54PM (1)	12:43:08PM (1)	12:47:54PM (1)
142:5	147:3	150:23	155:19	159:17
12:28:49PM (1)	12:33:47PM (1)	12:37:58PM (2)	12:43:12PM (1)	12:48:14PM (3)
142:6	147:7	151:2,3	155:21	159:25 160:2,3
12:28:50PM (1)	12:34:16PM (1)	12:38:02PM (1)	12:43:20PM (1)	12:48:22PM (1)
142:7	147:11	151:4	155:23	160:6
12:29:01PM (1)	12:34:37PM (1)	12:38:08PM (1)	12:43:51PM (2)	12:48:23PM (1)
142:11	147:20	151:7	156:2,3	160:7
12:29:12PM (1)	12:34:43PM (2)	12:38:12PM (1)	12:44:17PM (1)	12:48:26PM (1)
142:16	147:22,23	151:9	156:7	160:9
12:29:16PM (1)	12:34:54PM (1)	12:38:22PM (1)	12:44:18PM (1)	12:48:29PM (1)
142:19	148:4	151:12	156:8	160:10
12:29:18PM (1)	12:34:57PM (2)	12:38:37PM (1)	12:44:36PM (1)	12:48:34PM (1)
142:21	148:6,7	151:18	156:11	160:12
12:29:33PM (1)	12:35:02PM (1)	12:38:44PM (1)	12:44:38PM (1)	12:48:37PM (1)
143:2	148:9	151:22	156:12	160:14
12:29:47PM (1)	12:35:03PM (1)	12:38:47PM (1)	12:44:57PM (1)	12:48:58PM (1)
143:7	148:10	151:24	156:13	160:23
12:29:54PM (1)	12:35:04PM (1)	12:38:52PM (3)	12:44:59PM (1)	12:49:00PM (1)
143:10	148:11	152:3,4,5	156:14	160:24
12:30:08PM (1)	12:35:21PM (1)	12:39:05PM (2)	12:45:17PM (2)	12:49:07PM (1)
143:14	148:18	152:9,10	156:20,21	161:3
12:30:18PM (1)	12:35:31PM (1)	12:39:45PM (1)	12:45:18PM (1)	12:49:32PM (1)
143:19	148:19	152:22	156:22	161:14
12:30:37PM (1)	12:35:40PM (1)	12:39:53PM (1)	12:45:26PM (1)	12:49:36PM (1)
144:3	148:22	152:25	157:2	161:17
12:30:41PM (2)	12:35:41PM (2)	12:39:59PM (2)	12:45:27PM (1)	12:49:37PM (1)

161:18 12:49:38PM (1) 161:19 12:49:51PM (2) 161:23,24 12:49:55PM (1) 161:25 12:49:58PM (1) 162:2 12:50:00PM (1) 162:4 12:50:15PM (1) 162:10 12:50:21PM (1) 162:13 12:50:37PM (1) 162:21 12:50:42PM (1) 162:22 12:50:44PM (1) 162:23 12:50:51PM (1) 162:24 12:50:54PM (1) 163:2 12:51:02PM (1) 163:5 12:51:05PM (1) 163:7 12:51:10PM (1) 163:10 12:51:29PM (2) 163:17,18 12:51:33PM (1) 163:20 12:51:35PM (1) 163:21 12:51:40PM (1) 163:23 12:51:41PM (1) 163:24 12:51:43PM (1) 163:25 12:51:44PM (1) 164:2 12:51:46PM (1) 164:3 12:51:58PM (1) 164:7 12:52:04PM (1) 164:9 12:52:05PM (1) 164:10 12:52:09PM (1) 164:12 12:52:15PM (1) 164:15 12:52:16PM (1)	164:16 12:52:23PM (1) 164:17 12:52:33PM (1) 164:19 12:52:41PM (1) 164:23 12:52:48PM (2) 165:2,3 12:52:50PM (1) 165:4 12:52:51PM (1) 165:5 12:52:56PM (1) 165:7 12:52:57PM (1) 165:8 12:52:58PM (1) 165:9 12:53:02PM (1) 165:11 12:53:10PM (1) 165:14 12:53:22PM (1) 165:16 12:53:31PM (1) 165:19 12:53:37PM (1) 165:21 12:53:43PM (1) 165:24 12:53:44PM (1) 165:25 12:53:48PM (2) 166:3,4 12:53:49PM (2) 166:5,6 12:53:57PM (1) 166:8 12:54:22PM (1) 166:10 12:54:25PM (1) 166:12 12:54:29PM (1) 166:13 12:54:40PM (1) 166:17 12:54:47PM (1) 166:18 12:54:48PM (1) 166:20 12:54:52PM (1) 166:21 12:55:14PM (1) 167:3 12:55:20PM (1) 167:5 12:55:21PM (1)	167:6 12:55:30PM (1) 167:9 12:55:34PM (1) 167:12 12:55:36PM (2) 167:14,15 12:55:45PM (1) 167:19 12:55:52PM (1) 167:22 12:55:56PM (1) 167:24 12:56:04PM (1) 168:3 12:56:11PM (1) 168:6 12:56:16PM (1) 168:7 12:56:21PM (2) 168:10,11 12:56:29PM (2) 168:13,14 12:56:37PM (1) 168:18 12:56:40PM (1) 168:19 12:56:49PM (1) 168:22 12:56:55PM (1) 168:23 12:57:02PM (1) 169:2 12:57:22PM (1) 169:8 12:57:35PM (1) 169:12 12:57:38PM (1) 169:14 12:57:40PM (2) 169:16,17 12:57:57PM (1) 169:22 12:57:58PM (1) 169:23 12:58:06PM (1) 170:2 12:58:14PM (2) 170:5,6 12:58:22PM (1) 170:9 12:58:33PM (1) 170:14 12:58:47PM (1) 170:18 12:58:55PM (1) 170:22 12:59:05PM (1)	170:23 12:59:14PM (1) 171:3 12:59:16PM (1) 171:4 12:59:30PM (1) 171:8 12:59:32PM (1) 171:10 12:59:35PM (1) 171:11 12:59:36PM (1) 171:12 12:59:49PM (1) 171:14 1215 (1) 1:7 13 (3) 234:8,12 297:14 137 (1) 296:24 14 (6) 28:14 83:18,19,20 239:12 297:15 14th (1) 226:10 15 (8) 14:20 22:8 92:10 244:22,24 249:17 282:3 297:16 15th (2) 226:16 251:20 150 (4) 82:14 200:10 205:16 286:7 155 (1) 297:7 16 (3) 249:20,23 297:17 16th (1) 250:4 17 (3) 252:8,11 297:19 17th (1) 295:15 170 (1) 4:6 18 (1) 72:6 18th (1) 195:25 18-month (1) 68:9 19th (1) 194:24 19thth (1) 194:25 190 (2)	297:8,10 1974 (1) 16:3 1981 (2) 14:17 17:15 1982 (1) 14:20 1984 (1) 22:9 1986 (1) 205:17 1990 (1) 80:24 1991 (1) 111:21 1995 (1) 250:4 <hr/> 2 <hr/> 2 (17) 42:24 43:4 71:22 77:14 82:18 83:10 83:14,17,18,19,20 89:22 90:13 156:8 232:18 296:16 298:8 2B (1) 83:5 2:22:00PM (2) 190:2,4 2:22:53PM (1) 190:5 2:22:54PM (1) 190:6 2:24:20PM (1) 190:10 2:25:34PM (1) 190:13 2:25:44PM (1) 190:14 2:26:05PM (1) 190:21 2:26:41PM (1) 191:8 2:26:52PM (1) 191:14 2:26:53PM (1) 191:15 2:27:04PM (1) 191:18 2:27:13PM (1) 191:21 2:27:38PM (2) 192:3,4 2:27:43PM (1) 192:7 2:27:48PM (1) 192:8
--	--	---	--	---

2:27:59PM (1) 192:12	2:31:58PM (1) 196:3	2:35:40PM (3) 199:4,5,6	2:39:12PM (1) 202:14	2:42:30PM (1) 205:14
2:28:01PM (1) 192:13	2:32:04PM (1) 196:4	2:35:42PM (1) 199:7	2:39:14PM (1) 202:15	2:42:41PM (1) 205:17
2:28:26PM (1) 192:17	2:32:31PM (2) 196:10,11	2:35:51PM (1) 199:11	2:39:22PM (1) 202:18	2:42:44PM (1) 205:18
2:28:45PM (1) 192:23	2:32:48PM (1) 196:14	2:35:58PM (1) 199:14	2:39:33PM (1) 202:22	2:42:49PM (1) 205:20
2:28:46PM (1) 192:24	2:33:03PM (1) 196:18	2:36:06PM (1) 199:16	2:39:43PM (1) 202:25	2:42:59PM (1) 205:21
2:28:48PM (1) 192:25	2:33:09PM (1) 196:21	2:36:07PM (1) 199:17	2:39:44PM (1) 203:2	2:43:03PM (1) 205:22
2:28:54PM (1) 193:3	2:33:19PM (1) 196:24	2:36:09PM (1) 199:18	2:39:45PM (1) 203:3	2:43:11PM (2) 205:24,25
2:29:21PM (1) 193:12	2:33:20PM (1) 196:25	2:36:16PM (1) 199:21	2:39:49PM (2) 203:5,6	2:43:22PM (1) 206:5
2:29:35PM (1) 193:17	2:33:23PM (1) 197:2	2:36:17PM (1) 199:22	2:39:54PM (1) 203:8	2:43:23PM (1) 206:6
2:29:36PM (1) 193:18	2:33:31PM (1) 197:4	2:36:22PM (1) 199:25	2:40:00PM (2) 203:11,12	2:43:28PM (2) 206:8,9
2:29:40PM (1) 193:20	2:33:32PM (1) 197:5	2:36:42PM (1) 200:8	2:40:10PM (1) 203:13	2:43:30PM (1) 206:11
2:29:48PM (1) 193:24	2:33:36PM (1) 197:6	2:36:43PM (1) 200:9	2:40:20PM (1) 203:17	2:43:55PM (1) 206:17
2:29:57PM (1) 194:3	2:33:37PM (1) 197:7	2:36:53PM (1) 200:11	2:40:39PM (1) 203:23	2:44:04PM (1) 206:20
2:30:01PM (1) 194:5	2:33:39PM (1) 197:9	2:37:28PM (1) 200:19	2:40:48PM (1) 204:2	2:44:18PM (1) 206:25
2:30:07PM (1) 194:7	2:33:40PM (1) 197:10	2:37:29PM (1) 200:20	2:40:49PM (1) 204:3	2:44:29PM (1) 207:5
2:30:19PM (1) 194:11	2:33:43PM (1) 197:12	2:37:31PM (1) 200:21	2:40:54PM (1) 204:5	2:44:30PM (1) 207:6
2:30:24PM (1) 194:14	2:33:58PM (1) 197:18	2:37:33PM (1) 200:23	2:40:57PM (1) 204:7	2:44:44PM (1) 207:9
2:30:25PM (1) 194:15	2:34:03PM (1) 197:20	2:37:45PM (1) 201:4	2:41:00PM (2) 204:9,10	2:44:54PM (1) 207:12
2:30:41PM (1) 194:21	2:34:07PM (1) 197:21	2:37:57PM (1) 201:7	2:41:08PM (1) 204:13	2:45:01PM (1) 207:15
2:31:15PM (1) 195:5	2:34:19PM (2) 197:24,25	2:38:14PM (1) 201:12	2:41:11PM (1) 204:14	2:45:07PM (1) 207:18
2:31:16PM (1) 195:6	2:34:26PM (2) 198:4,5	2:38:15PM (1) 201:13	2:41:14PM (1) 204:16	2:45:13PM (1) 207:21
2:31:17PM (1) 195:7	2:34:48PM (1) 198:10	2:38:26PM (2) 201:18,19	2:41:16PM (1) 204:17	2:45:25PM (1) 207:23
2:31:25PM (1) 195:11	2:34:55PM (1) 198:12	2:38:33PM (1) 201:22	2:41:20PM (2) 204:19,20	2:45:48PM (1) 208:4
2:31:33PM (1) 195:15	2:34:57PM (1) 198:13	2:38:35PM (1) 201:24	2:41:26PM (1) 204:22	2:45:51PM (1) 208:6
2:31:39PM (2) 195:17,18	2:34:58PM (1) 198:14	2:38:44PM (1) 202:2	2:41:35PM (1) 204:23	2:45:52PM (1) 208:7
2:31:40PM (1) 195:19	2:35:06PM (1) 198:17	2:38:49PM (1) 202:4	2:41:43PM (1) 205:2	2:45:55PM (1) 208:9
2:31:42PM (1) 195:20	2:35:09PM (1) 198:18	2:38:55PM (1) 202:6	2:42:08PM (1) 205:6	2:45:57PM (1) 208:11
2:31:43PM (1) 195:21	2:35:33PM (1) 198:24	2:39:01PM (1) 202:9	2:42:24PM (1) 205:11	2:46:00PM (1) 208:13
2:31:54PM (1) 195:25	2:35:36PM (1) 199:2	2:39:05PM (1) 202:11	2:42:25PM (1) 205:12	2:46:02PM (1) 208:14

2:46:10PM (1) 208:17	2:48:52PM (1) 210:24	2:52:39PM (1) 214:12	2:55:43PM (1) 217:22	2:59:48PM (2) 220:21,22
2:46:12PM (1) 208:18	2:49:01PM (1) 211:3	2:52:40PM (1) 214:13	2:55:46PM (2) 217:23,24	2:59:55PM (1) 220:24
2:46:19PM (1) 208:20	2:49:04PM (1) 211:4	2:52:44PM (1) 214:15	2:55:58PM (1) 218:3	20 (1) 36:10
2:46:23PM (1) 208:21	2:49:07PM (1) 211:7	2:52:45PM (1) 214:16	2:55:59PM (1) 218:5	2000 (19) 24:8 26:6 27:2,12 28:4,13,19 31:13,19 80:18,24 90:7 128:24 142:9,18 171:16 172:9 204:21 214:6
2:46:32PM (1) 208:24	2:49:16PM (1) 211:10	2:52:47PM (1) 214:18	2:56:06PM (1) 218:8	2001 (1) 288:16
2:46:39PM (1) 209:2	2:49:18PM (1) 211:11	2:52:50PM (1) 214:19	2:56:09PM (1) 218:10	2002 (1) 43:18
2:46:41PM (1) 209:3	2:49:30PM (1) 211:15	2:52:54PM (1) 214:21	2:56:25PM (1) 218:13	2003 (7) 190:7 194:22,25 195:25 196:5 227:6 297:9
2:46:48PM (1) 209:6	2:49:35PM (1) 211:18	2:52:58PM (1) 214:23	2:56:39PM (2) 218:17,18	2004 (3) 13:10,15,23
2:46:51PM (1) 209:8	2:49:41PM (1) 211:21	2:53:04PM (1) 215:2	2:56:46PM (1) 218:21	2005 (8) 236:11 252:11 255:14 256:4 280:14 283:8 283:12 297:19
2:46:54PM (1) 209:10	2:49:43PM (1) 211:22	2:53:09PM (1) 215:3	2:56:47PM (1) 218:22	2006 (17) 23:22,25 24:2 183:19 194:24,25 196:2 214:7 226:10,17,22 233:8 280:19 281:4 281:25 283:10,13
2:46:55PM (1) 209:11	2:49:45PM (1) 211:23	2:53:10PM (1) 215:4	2:56:59PM (1) 219:2	2007 (5) 174:12 183:8,12 244:24 297:16
2:47:04PM (1) 209:15	2:49:47PM (1) 211:24	2:53:21PM (1) 215:7	2:57:12PM (1) 219:7	2008 (2) 13:17 236:12
2:47:06PM (1) 209:17	2:49:58PM (1) 212:3	2:53:22PM (1) 215:8	2:57:20PM (1) 219:10	2009 (8) 1:19 2:4 141:10,12,21 294:9 295:15 298:3
2:47:07PM (1) 209:18	2:50:10PM (2) 212:6,7	2:53:40PM (1) 215:14	2:57:29PM (1) 219:13	22PM (1) 115:7
2:47:17PM (1) 209:19	2:50:15PM (1) 212:9	2:53:41PM (1) 215:15	2:57:34PM (1) 219:15	220 (1) 297:11
2:47:21PM (1) 209:21	2:50:21PM (1) 212:11	2:53:48PM (1) 215:18	2:57:35PM (1) 219:16	22935 (1) 1:24
2:47:22PM (1) 209:22	2:50:28PM (1) 212:13	2:53:49PM (1) 215:19	2:57:37PM (1) 219:18	234 (1) 297:14
2:47:28PM (1) 209:24	2:50:40PM (1) 212:16	2:54:11PM (1) 216:2	2:57:44PM (1) 219:20	239 (1) 297:15
2:47:32PM (1) 210:2	2:50:53PM (1) 212:21	2:54:13PM (1) 216:4	2:58:01PM (1) 219:22	245 (1) 297:16
2:47:35PM (1) 210:4	2:50:54PM (1) 212:22	2:54:24PM (1) 216:9	2:58:13PM (1) 219:25	249 (1) 297:17
2:47:44PM (1) 210:7	2:50:55PM (1) 212:23	2:54:26PM (1) 216:10	2:59:00PM (1) 220:5	25 (4) 84:7,9 86:22 281:25 25,000 (2)
2:47:45PM (1) 210:8	2:51:43PM (1) 213:16	2:54:53PM (1) 216:20	2:59:01PM (1) 220:6	
2:47:51PM (1) 210:11	2:51:44PM (2) 213:17,18	2:54:59PM (1) 216:23	2:59:08PM (1) 220:9	
2:47:57PM (1) 210:14	2:51:53PM (1) 213:21	2:55:06PM (2) 217:4,5	2:59:18PM (1) 220:11	
2:48:17PM (1) 210:15	2:52:05PM (1) 213:25	2:55:26PM (1) 217:12	2:59:26PM (1) 220:13	
2:48:24PM (1) 210:16	2:52:13PM (1) 214:4	2:55:30PM (1) 217:14	2:59:33PM (1) 220:14	
2:48:42PM (1) 210:21	2:52:20PM (1) 214:6	2:55:32PM (1) 217:17	2:59:38PM (1) 220:16	
2:48:47PM (1) 210:22	2:52:35PM (1) 214:10	2:55:33PM (1) 217:18	2:59:39PM (1) 220:17	
2:48:49PM (1) 210:23	2:52:38PM (1) 214:11	2:55:42PM (1) 217:21	2:59:40PM (1) 220:18	

149:22,23	223:10	226:10	228:25	231:10
252 (1)	3:02:45PM (1)	3:05:45PM (1)	3:08:50PM (1)	3:12:10PM (1)
297:19	223:13	226:11	229:2	231:12
267 (1)	3:02:54PM (1)	3:05:48PM (1)	3:08:51PM (1)	3:12:17PM (1)
191:23	223:16	226:12	229:3	231:15
278 (1)	3:02:57PM (1)	3:05:51PM (1)	3:08:55PM (1)	3:12:22PM (1)
296:5	223:18	226:14	229:6	231:17
290 (1)	3:03:02PM (1)	3:05:52PM (2)	3:09:00PM (1)	3:12:34PM (1)
296:6	223:20	226:15,16	229:7	231:20
291 (1)	3:03:12PM (1)	3:05:58PM (1)	3:09:16PM (1)	3:12:35PM (1)
296:7	223:23	226:18	229:13	231:21
	3:03:14PM (1)	3:06:22PM (1)	3:09:17PM (1)	3:12:39PM (1)
3	223:24	226:25	229:14	231:23
3 (10)	3:03:17PM (1)	3:06:34PM (1)	3:09:24PM (1)	3:12:55PM (1)
32:10 65:14,20 66:9	224:2	227:5	229:15	232:2
77:8 78:8 79:11	3:03:21PM (1)	3:06:47PM (1)	3:09:29PM (2)	3:13:06PM (1)
89:22 296:17 298:9	224:4	227:8	229:17,18	232:6
3:00:02PM (1)	3:03:23PM (1)	3:06:51PM (1)	3:09:37PM (1)	3:13:07PM (1)
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3:00:08PM (1)	3:03:34PM (1)	3:06:58PM (1)	3:09:48PM (1)	3:13:13PM (1)
221:5	224:8	227:10	229:22	232:8
3:00:14PM (1)	3:03:47PM (1)	3:07:05PM (1)	3:10:00PM (1)	3:13:18PM (1)
221:7	224:12	227:13	230:2	232:10
3:00:21PM (1)	3:03:50PM (1)	3:07:18PM (1)	3:10:02PM (1)	3:13:22PM (1)
221:10	224:13	227:15	230:3	232:12
3:00:29PM (1)	3:03:55PM (1)	3:07:24PM (2)	3:10:04PM (1)	3:13:42PM (1)
221:14	224:16	227:17,18	230:4	232:18
3:00:44PM (1)	3:04:09PM (1)	3:07:26PM (1)	3:10:19PM (1)	3:13:56PM (1)
221:18	224:20	227:19	230:6	232:20
3:00:53PM (1)	3:04:17PM (1)	3:07:31PM (1)	3:10:22PM (1)	3:14:19PM (1)
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3:00:56PM (1)	3:04:19PM (1)	3:07:38PM (1)	3:10:23PM (1)	3:14:24PM (1)
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221:24	225:5	227:25	230:11	233:2
3:01:15PM (1)	3:04:42PM (1)	3:07:55PM (1)	3:11:05PM (1)	3:14:38PM (1)
222:2	225:8	228:4	230:14	233:5
3:01:30PM (2)	3:04:50PM (1)	3:07:57PM (1)	3:11:07PM (1)	3:14:58PM (1)
222:7,8	225:11	228:5	230:16	233:7
3:01:42PM (2)	3:04:52PM (1)	3:08:01PM (1)	3:11:08PM (1)	3:15:11PM (1)
222:11,12	225:13	228:7	230:17	233:12
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222:14	225:17	228:9	230:20	233:15
3:01:50PM (1)	3:05:05PM (1)	3:08:14PM (1)	3:11:25PM (1)	3:15:23PM (1)
222:16	225:18	228:11	230:23	233:17
3:02:08PM (1)	3:05:06PM (1)	3:08:15PM (1)	3:11:28PM (1)	3:15:28PM (1)
222:20	225:19	228:12	230:24	233:19
3:02:10PM (1)	3:05:14PM (1)	3:08:16PM (2)	3:11:34PM (1)	3:15:32PM (1)
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3:02:16PM (1)	3:05:25PM (1)	3:08:25PM (1)	3:11:35PM (1)	3:15:40PM (1)
222:24	226:2	228:18	231:3	233:23
3:02:26PM (1)	3:05:30PM (1)	3:08:33PM (1)	3:11:37PM (1)	3:15:50PM (1)
223:3	226:4	228:19	231:4	234:3
3:02:32PM (1)	3:05:39PM (1)	3:08:36PM (2)	3:11:53PM (1)	3:16:10PM (1)
223:8	226:7	228:21,22	231:5	234:7
3:02:33PM (1)	3:05:43PM (1)	3:08:38PM (1)	3:12:03PM (1)	3:16:21PM (1)
223:9	226:9	228:23	231:9	234:11
3:02:35PM (1)	3:05:44PM (1)	3:08:44PM (1)	3:12:04PM (1)	3:16:56PM (1)

234:14 3:16:57PM (1) 234:15 3:17:11PM (1) 234:20 3:17:18PM (1) 234:22 3:17:20PM (1) 234:23 3:17:31PM (1) 235:2 3:17:45PM (1) 235:7 3:17:50PM (1) 235:10 3:17:54PM (1) 235:13 3:17:55PM (1) 235:14 3:18:05PM (1) 235:17 3:18:20PM (1) 235:21 3:18:40PM (1) 236:3 3:18:45PM (1) 236:5 3:18:54PM (1) 236:8 3:19:01PM (1) 236:10 3:19:18PM (1) 236:15 3:19:22PM (1) 236:16 3:19:37PM (1) 236:20 3:19:39PM (1) 236:22 3:19:42PM (1) 236:24 3:19:48PM (1) 237:2 3:19:54PM (1) 237:5 3:19:57PM (1) 237:7 3:19:59PM (2) 237:9,10 3:20:00PM (1) 237:11 3:20:07PM (1) 237:13 3:20:14PM (1) 237:16 3:20:16PM (1) 237:17 3:20:23PM (1)	237:20 3:20:24PM (1) 237:21 3:20:32PM (1) 237:24 3:20:50PM (1) 238:5 3:21:09PM (1) 238:10 3:21:15PM (1) 238:12 3:21:16PM (1) 238:13 3:21:25PM (1) 238:15 3:21:37PM (1) 238:19 3:21:51PM (1) 238:22 3:21:54PM (1) 238:24 3:21:56PM (1) 238:25 3:21:58PM (1) 239:3 3:21:59PM (1) 239:4 3:22:01PM (1) 239:6 3:22:03PM (1) 239:7 3:22:14PM (1) 239:8 3:22:20PM (1) 239:11 3:23:00PM (1) 239:14 3:23:01PM (1) 239:15 3:23:05PM (1) 239:17 3:23:06PM (1) 239:18 3:23:13PM (1) 239:21 3:23:14PM (1) 239:22 3:24:02PM (1) 239:23 3:24:03PM (1) 239:24 3:24:16PM (1) 240:5 3:24:18PM (1) 240:6 3:24:21PM (1) 240:8 3:24:27PM (1)	240:10 3:24:29PM (1) 240:11 3:24:38PM (1) 240:14 3:24:49PM (1) 240:18 3:25:15PM (1) 240:24 3:25:28PM (1) 241:4 3:25:29PM (1) 241:5 3:25:33PM (1) 241:7 3:25:40PM (1) 241:10 3:25:49PM (1) 241:14 3:25:55PM (1) 241:15 3:26:02PM (1) 241:17 3:26:06PM (1) 241:19 3:26:12PM (2) 241:23,24 3:26:13PM (1) 241:25 3:26:28PM (1) 242:6 3:26:34PM (1) 242:9 3:26:40PM (1) 242:12 3:27:07PM (1) 242:21 3:27:20PM (1) 242:22 3:27:25PM (1) 242:24 3:27:36PM (1) 243:4 3:27:51PM (1) 243:7 3:27:55PM (1) 243:9 3:28:10PM (1) 243:14 3:28:11PM (1) 243:15 3:28:14PM (2) 243:17,18 3:28:16PM (1) 243:19 3:28:18PM (1) 243:20 3:28:28PM (1)	243:24 3:28:30PM (1) 243:25 3:28:31PM (2) 244:2,3 3:28:33PM (1) 244:4 3:28:35PM (1) 244:6 3:28:38PM (1) 244:8 3:28:39PM (3) 244:9,10,11 3:28:55PM (1) 244:17 3:28:56PM (1) 244:18 3:29:00PM (1) 244:20 3:29:01PM (1) 244:21 3:36:39PM (1) 244:22 3:36:42PM (1) 244:23 3:37:03PM (1) 245:2 3:37:07PM (1) 245:3 3:37:16PM (1) 245:7 3:37:18PM (1) 245:8 3:37:22PM (1) 245:11 3:37:29PM (2) 245:14,15 3:37:32PM (1) 245:16 3:37:46PM (1) 245:21 3:37:52PM (1) 245:24 3:37:54PM (1) 245:25 3:37:57PM (1) 246:3 3:38:03PM (1) 246:4 3:38:07PM (1) 246:6 3:38:19PM (1) 246:10 3:38:23PM (1) 246:13 3:38:30PM (1) 246:15 3:38:45PM (1)	246:20 3:38:53PM (1) 246:23 3:39:13PM (1) 247:4 3:39:17PM (1) 247:5 3:39:26PM (1) 247:9 3:39:38PM (1) 247:13 3:39:45PM (1) 247:14 3:39:47PM (1) 247:16 3:39:51PM (1) 247:18 3:40:13PM (1) 247:21 3:40:18PM (1) 247:23 3:40:25PM (1) 248:2 3:40:28PM (1) 248:4 3:40:33PM (1) 248:6 3:40:50PM (1) 248:10 3:41:00PM (1) 248:14 3:41:01PM (1) 248:15 3:41:18PM (1) 248:20 3:41:22PM (1) 248:21 3:41:33PM (1) 248:25 3:41:34PM (1) 249:2 3:41:40PM (1) 249:6 3:41:41PM (1) 249:7 3:41:45PM (1) 249:9 3:41:50PM (1) 249:10 3:42:00PM (1) 249:13 3:42:01PM (1) 249:14 3:42:03PM (1) 249:16 3:42:37PM (1) 249:18 3:42:48PM (1)
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249:20 3:42:52PM (1) 249:21 3:43:29PM (1) 250:2 3:43:36PM (1) 250:3 3:43:52PM (1) 250:8 3:43:56PM (1) 250:10 3:44:05PM (1) 250:11 3:44:15PM (1) 250:13 3:44:18PM (1) 250:14 3:44:33PM (1) 250:18 3:44:35PM (1) 250:19 3:44:44PM (1) 250:22 3:44:46PM (1) 250:24 3:44:52PM (2) 251:2,3 3:45:02PM (1) 251:7 3:45:11PM (1) 251:9 3:45:13PM (1) 251:11 3:45:14PM (1) 251:12 3:45:15PM (1) 251:13 3:45:33PM (1) 251:19 3:45:44PM (1) 251:22 3:46:12PM (1) 252:6 3:46:29PM (1) 252:7 3:46:36PM (1) 252:10 3:47:32PM (2) 252:13,14 3:47:35PM (2) 252:16,17 3:47:39PM (1) 252:18 3:47:40PM (1) 252:19 3:47:48PM (1) 252:22 3:47:51PM (1)	252:24 3:47:53PM (1) 252:25 3:47:59PM (1) 253:2 3:48:28PM (1) 253:11 3:48:43PM (1) 253:16 3:48:53PM (1) 253:19 3:49:23PM (1) 254:4 3:49:36PM (1) 254:8 3:49:41PM (1) 254:9 3:49:58PM (1) 254:14 3:50:02PM (1) 254:16 3:50:03PM (1) 254:17 3:50:04PM (1) 254:18 3:50:20PM (1) 254:23 3:50:41PM (1) 255:2 3:51:01PM (1) 255:8 3:51:23PM (1) 255:15 3:51:29PM (1) 255:16 3:51:37PM (2) 255:19,20 3:51:41PM (1) 255:22 3:51:43PM (1) 255:24 3:51:44PM (1) 255:25 3:51:54PM (1) 256:3 3:52:04PM (1) 256:6 3:52:10PM (1) 256:8 3:52:20PM (1) 256:10 3:52:28PM (1) 256:12 3:52:39PM (1) 256:13 3:52:50PM (1) 256:18 3:52:52PM (1)	256:20 3:52:56PM (1) 256:22 3:52:57PM (1) 256:23 3:53:01PM (2) 256:25 257:2 3:53:07PM (1) 257:4 3:53:10PM (1) 257:5 3:53:22PM (1) 257:9 3:53:26PM (1) 257:10 3:53:41PM (1) 257:15 3:53:48PM (1) 257:16 3:53:57PM (1) 257:18 3:57:53PM (1) 257:19 3:58:15PM (1) 257:20 3:58:27PM (1) 257:25 3:58:29PM (1) 258:2 3:58:38PM (1) 258:5 3:58:39PM (1) 258:6 3:58:41PM (1) 258:7 3:58:51PM (1) 258:10 3:59:13PM (1) 258:15 3:59:46PM (1) 258:24 3:59:51PM (1) 259:2 30 (2) 19:10 252:2 30th (2) 141:12,21 30(b)(6) (10) 18:22 19:6,12 24:25 36:21 136:4 145:7 145:12 150:12 296:15 35 (3) 19:25 84:17 290:10 355th (1) 226:23 36 (1) 296:15	37 (1) 84:17 3847 (3) 239:10,11 297:15 <hr/> 4 <hr/> 4 (5) 77:8 97:17,23 100:5 296:18 4-26-02 (1) 43:12 4:00:00PM (1) 259:3 4:00:03PM (1) 259:5 4:00:04PM (1) 259:6 4:00:05PM (1) 259:7 4:00:12PM (1) 259:9 4:00:20PM (2) 259:12,13 4:00:27PM (1) 259:17 4:00:31PM (1) 259:19 4:00:36PM (2) 259:21,22 4:00:41PM (1) 259:23 4:00:45PM (1) 259:24 4:00:48PM (1) 260:2 4:00:55PM (1) 260:5 4:01:01PM (1) 260:8 4:01:03PM (1) 260:9 4:01:10PM (1) 260:11 4:01:11PM (1) 260:12 4:02:21PM (1) 260:14 4:02:42PM (1) 260:15 4:02:49PM (1) 260:19 4:02:50PM (1) 260:20 4:02:57PM (1) 260:22 4:03:02PM (1) 260:23 4:03:06PM (1)	260:25 4:03:07PM (1) 261:2 4:03:11PM (1) 261:4 4:03:17PM (1) 261:6 4:03:24PM (2) 261:9,10 4:03:30PM (1) 261:13 4:03:35PM (1) 261:15 4:03:40PM (1) 261:16 4:03:44PM (1) 261:18 4:03:52PM (1) 261:21 4:03:59PM (1) 261:22 4:04:05PM (2) 262:2,3 4:04:16PM (1) 262:6 4:04:32PM (1) 262:10 4:04:40PM (1) 262:13 4:04:43PM (1) 262:15 4:04:50PM (1) 262:17 4:04:51PM (2) 262:18,19 4:04:54PM (1) 262:21 4:04:55PM (1) 262:22 4:04:59PM (1) 262:24 4:05:01PM (1) 263:2 4:05:09PM (1) 263:5 4:05:12PM (1) 263:7 4:05:15PM (1) 263:9 4:05:19PM (1) 263:11 4:05:20PM (1) 263:12 4:05:24PM (1) 263:13 4:05:28PM (1) 263:15 4:05:30PM (1)
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263:16 4:05:35PM (1) 263:18 4:05:39PM (1) 263:19 4:05:44PM (1) 263:21 4:05:45PM (1) 263:22 4:05:51PM (1) 263:23 4:05:54PM (1) 264:2 4:06:01PM (1) 264:3 4:06:16PM (1) 264:6 4:06:31PM (1) 264:10 4:06:35PM (1) 264:12 4:06:38PM (1) 264:13 4:06:46PM (1) 264:16 4:06:56PM (1) 264:17 4:07:07PM (1) 264:21 4:07:13PM (1) 264:24 4:07:17PM (1) 265:2 4:07:27PM (1) 265:4 4:07:47PM (1) 265:9 4:07:57PM (1) 265:12 4:08:00PM (1) 265:13 4:08:05PM (1) 265:16 4:08:06PM (2) 265:17,18 4:08:08PM (1) 265:19 4:08:12PM (1) 265:20 4:08:16PM (2) 265:21,22 4:09:07PM (1) 265:24 4:09:15PM (2) 266:2,3 4:09:34PM (1) 266:9 4:09:40PM (1)	266:11 4:09:52PM (1) 266:15 4:10:00PM (1) 266:16 4:10:15PM (1) 266:21 4:10:16PM (1) 266:22 4:10:17PM (1) 266:23 4:10:28PM (1) 266:24 4:10:36PM (1) 267:3 4:10:37PM (1) 267:4 4:10:45PM (1) 267:7 4:10:52PM (1) 267:9 4:11:03PM (1) 267:13 4:11:10PM (1) 267:15 4:11:19PM (1) 267:18 4:11:20PM (1) 267:19 4:11:34PM (1) 267:23 4:11:36PM (1) 267:24 4:11:43PM (1) 268:3 4:11:49PM (1) 268:5 4:11:55PM (1) 268:7 4:12:03PM (2) 268:11,12 4:12:15PM (1) 268:15 4:12:25PM (1) 268:18 4:12:38PM (1) 268:22 4:12:42PM (1) 268:24 4:12:44PM (1) 268:25 4:12:53PM (1) 269:4 4:12:58PM (1) 269:7 4:12:59PM (1) 269:8 4:13:09PM (1)	269:12 4:13:12PM (1) 269:13 4:13:21PM (1) 269:16 4:13:23PM (1) 269:17 4:13:32PM (1) 269:21 4:13:44PM (1) 269:24 4:13:49PM (1) 270:2 4:13:58PM (1) 270:4 4:14:03PM (1) 270:6 4:14:19PM (1) 270:12 4:14:25PM (1) 270:14 4:14:36PM (1) 270:16 4:14:42PM (1) 270:18 4:14:44PM (1) 270:20 4:14:46PM (1) 270:21 4:14:48PM (1) 270:23 4:14:52PM (1) 270:24 4:15:03PM (1) 271:4 4:15:08PM (1) 271:5 4:15:13PM (1) 271:8 4:15:16PM (1) 271:9 4:15:17PM (1) 271:10 4:15:26PM (1) 271:16 4:15:32PM (1) 271:19 4:15:34PM (1) 271:20 4:15:36PM (1) 271:22 4:15:37PM (1) 271:23 4:15:40PM (1) 271:25 4:15:47PM (1) 272:2 4:15:51PM (1)	272:4 4:15:56PM (1) 272:7 4:16:07PM (1) 272:10 4:16:14PM (1) 272:12 4:16:26PM (1) 272:16 4:16:29PM (1) 272:18 4:16:34PM (1) 272:20 4:16:37PM (1) 272:21 4:16:38PM (1) 272:22 4:16:53PM (1) 273:2 4:16:54PM (1) 273:3 4:17:05PM (1) 273:7 4:17:20PM (1) 273:9 4:17:23PM (1) 273:11 4:17:31PM (1) 273:12 4:17:40PM (1) 273:15 4:17:42PM (1) 273:17 4:17:43PM (1) 273:18 4:17:58PM (1) 273:20 4:18:11PM (1) 273:25 4:18:23PM (1) 274:6 4:18:35PM (1) 274:10 4:18:43PM (1) 274:13 4:18:51PM (1) 274:17 4:18:52PM (1) 274:18 4:18:59PM (1) 274:22 4:19:04PM (2) 274:23,24 4:19:13PM (1) 275:3 4:19:27PM (1) 275:6 4:19:35PM (1)	275:9 4:19:52PM (2) 275:17,18 4:19:57PM (1) 275:20 4:20:00PM (1) 275:22 4:20:12PM (1) 275:25 4:20:21PM (1) 276:4 4:20:35PM (1) 276:8 4:20:36PM (1) 276:9 4:20:44PM (1) 276:11 4:20:52PM (1) 276:12 4:21:14PM (1) 276:17 4:21:15PM (1) 276:18 4:21:17PM (1) 276:19 4:21:20PM (1) 276:20 4:21:25PM (1) 276:23 4:21:28PM (1) 276:24 4:21:41PM (1) 277:4 4:21:42PM (1) 277:5 4:21:43PM (1) 277:6 4:21:47PM (1) 277:8 4:21:55PM (1) 277:11 4:22:03PM (1) 277:17 4:22:10PM (1) 277:20 4:22:18PM (1) 277:25 4:22:23PM (1) 278:3 4:22:31PM (1) 278:6 4:22:34PM (1) 278:10 4:24:01PM (1) 278:12 4:24:10PM (1) 278:17 4:24:11PM (1)
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278:18 4:24:12PM (1) 278:19 4:24:14PM (1) 278:20 4:24:29PM (1) 279:2 4:24:30PM (1) 279:3 4:24:32PM (1) 279:4 4:24:37PM (1) 279:6 4:24:52PM (1) 279:11 4:24:53PM (1) 279:12 4:25:03PM (1) 279:15 4:25:13PM (1) 279:19 4:25:15PM (1) 279:20 4:25:18PM (1) 279:22 4:25:29PM (1) 280:2 4:25:33PM (1) 280:4 4:26:00PM (1) 280:9 4:26:10PM (1) 280:12 4:26:15PM (1) 280:14 4:26:29PM (2) 280:18,19 4:26:40PM (1) 280:22 4:26:45PM (1) 280:23 4:26:48PM (1) 280:25 4:27:00PM (2) 281:2,7 4:27:01PM (1) 281:8 4:27:03PM (1) 281:9 4:27:06PM (1) 281:10 4:27:13PM (1) 281:13 4:27:17PM (1) 281:16 4:27:22PM (1) 281:18 4:27:25PM (1)	281:21 4:27:29PM (1) 281:23 4:27:30PM (1) 281:24 4:27:50PM (1) 282:6 4:28:02PM (1) 282:7 4:28:12PM (1) 282:11 4:28:13PM (1) 282:12 4:28:22PM (1) 282:16 4:28:29PM (1) 282:19 4:28:41PM (1) 282:25 4:28:48PM (1) 283:4 4:29:20PM (1) 283:14 4:29:21PM (1) 283:15 4:29:34PM (1) 283:16 4:29:37PM (1) 283:18 4:29:39PM (1) 283:19 4:29:41PM (1) 283:21 4:29:45PM (1) 283:23 4:30:11PM (1) 284:2 4:30:15PM (1) 284:4 4:30:17PM (1) 284:5 4:30:35PM (2) 284:11,12 4:30:52PM (1) 284:18 4:30:56PM (1) 284:19 4:31:13PM (1) 285:2 4:31:24PM (1) 285:3 4:31:42PM (1) 285:8 4:31:44PM (1) 285:10 4:31:53PM (1) 285:13 4:31:56PM (1)	285:14 4:32:02PM (1) 285:17 4:32:04PM (1) 285:18 4:32:13PM (2) 285:20,21 4:32:19PM (1) 285:24 4:32:21PM (1) 285:25 4:32:33PM (1) 286:4 4:32:36PM (1) 286:5 4:32:40PM (1) 286:7 4:32:50PM (1) 286:11 4:33:01PM (1) 286:14 4:33:09PM (1) 286:17 4:33:12PM (1) 286:19 4:33:13PM (1) 286:20 4:33:27PM (1) 286:25 4:33:32PM (1) 287:2 4:33:42PM (1) 287:5 4:33:43PM (1) 287:6 4:33:56PM (1) 287:12 4:33:57PM (1) 287:13 4:34:04PM (1) 287:15 4:34:10PM (1) 287:17 4:34:17PM (1) 287:21 4:34:18PM (1) 287:22 4:34:40PM (1) 288:4 4:34:43PM (1) 288:5 4:35:01PM (1) 288:10 4:35:02PM (1) 288:11 4:35:05PM (1) 288:13 4:35:07PM (1)	288:15 4:35:24PM (1) 288:20 4:35:25PM (1) 288:21 4:35:27PM (1) 288:23 4:35:31PM (1) 288:24 4:35:48PM (2) 289:5,6 4:35:51PM (1) 289:8 4:36:07PM (1) 289:9 4:36:16PM (2) 289:12,13 4:36:23PM (1) 289:16 4:36:26PM (1) 289:18 4:36:36PM (2) 289:22,23 4:36:47PM (1) 290:3 4:36:50PM (1) 290:4 4:36:54PM (2) 290:6,7 4:36:59PM (1) 290:9 4:37:04PM (1) 290:11 4:37:06PM (1) 290:12 4:37:07PM (1) 290:13 4:37:09PM (3) 290:15,16,17 4:37:12PM (1) 290:18 4:37:14PM (1) 290:19 4:37:19PM (1) 290:21 4:37:22PM (1) 290:23 4:37:29PM (1) 291:3 4:37:31PM (1) 291:5 4:37:42PM (1) 291:7 4:37:43PM (2) 291:8,9 4:37:46PM (1) 291:10 4:37:51PM (1)	291:12 4:38:09PM (1) 291:18 4:38:10PM (1) 291:19 4:38:11PM (1) 291:20 4:38:20PM (1) 291:22 4:38:43PM (1) 292:4 4:38:46PM (1) 292:5 4:39:09PM (1) 292:12 4:39:27PM (1) 292:14 4:39:32PM (1) 292:23 4:39:36PM (1) 292:24 4:39:54PM (1) 293:5 4:39:55PM (1) 293:6 4:39:57PM (1) 293:7 4:39:58PM (1) 293:8 4:40 (1) 294:5 4:40:10PM (1) 293:12 4:40:16PM (1) 293:13 4:40:23PM (1) 293:15 4:40:33PM (1) 293:18 4:40:37PM (1) 293:19 4:40:38PM (1) 294:2 4:40:39PM (1) 294:4 4:40:40PM (9) 294:5,6,7,8,8,9,9,10 294:11 40 (3) 84:18,20,24 43 (1) 296:16 47 (1) 297:4 47AM (1) 58:11
<hr/> <div>5</div> <hr/>				

<p>5 (10) 1:19 2:4 77:17 103:19 103:23 104:25 106:20 224:9 296:20 298:3</p> <p>5B (1) 276:12</p> <p>50 (3) 84:2,13 85:3</p> <p>5002 (1) 227:6</p> <p>530 (1) 3:12</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 (8) 79:5 108:18 244:23 252:10 296:4,21 297:16,19</p> <p>6th (1) 256:4</p> <p>6-1-05 (2) 200:15,15</p> <p>6-15-05 (1) 200:12</p> <p>60 (3) 130:10 131:20 252:3</p> <p>64 (8) 137:17,21 138:3,21 139:11 142:8 144:22 296:25</p> <p>65 (8) 147:4,8,14,24 148:21 148:22 296:17 297:5</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 (9) 38:5 131:7 137:14,22 145:6 190:7 194:22 296:24 297:9</p> <p>7th (4) 194:25 195:25 196:5 196:7</p> <p>7-18-94 (1) 98:19</p> <p>70 (1) 128:22</p> <p>725 (1) 6:9</p> <p>74 (1) 16:6</p> <p>75 (5) 151:13 275:9 276:15 276:16,25</p> <p>75B (17) 151:4,11 152:8 153:7 153:17 154:11,15</p>	<p>155:22 160:4 161:22 260:22 265:10 266:8,13 277:3,7,13</p> <p>75B1 (1) 158:21</p> <p>75-b (3) 155:23 157:19 297:7</p> <p>76 (2) 16:6,7</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 (4) 147:3,10 174:12 297:4</p> <p>85 (1) 3:5</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 (4) 78:8 155:21,24 297:7</p> <p>9:59:44AM (2) 6:11,12</p> <p>9:59:55AM (1) 6:13</p> <p>926 (1) 3:22</p> <p>95 (1) 251:20</p> <p>97 (1) 296:18</p>			
--	--	--	--	--